

SIXTY-EIGHTH DAY
(Friday, May 19, 1989)

The Senate met at 9:30 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Edwards, Glasgow, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Ratliff, Santiesteban, Sims, Tejada, Truan, Uribe, Washington, Whitmire, Zaffirini.

A quorum was announced present.

The Reverend Charles Pringle, Associate Minister, Woodards Cathedral Church of God and Christ, Houston, offered the invocation as follows:

Heavenly Father, in Your Son's name Jesus, we come to You today asking that You teach us and guide us in all things, for we are glad to be in Your presence. We thank You for this Legislative body of this great State of Texas. I thank You for what You have done so far, and once again, I thank You for what You are going to do. Lord, as we present this great body of lawmakers before the Kingdom, we ask forgiveness and deliverance of our State. Help us to rid it of poverty and make our economy flourish once again. Rid us of homelessness, dope and despair, for we realize we can do nothing of ourselves, but through You we can do all things. Teach us how to agree and disagree agreeably, for we shall give You the praise and glory. As we move forward, continually bless each and every one of these lawmakers and their families as well. Bless their going out and coming in as they take their rightful places as heads of a great State and as leaders among men, counties, cities and the good old U.S.A. Thank You in advance. Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

MESSAGE FROM THE HOUSE

House Chamber
May 19, 1989

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.J.R. 44, Proposing a constitutional amendment to eliminate certain time limitations relating to the issuance of Texas agricultural water conservation bonds.

S.B. 49, Relating to fees for certain court services.

S.B. 606, Relating to certain health insurance benefits for diagnostic, treatment and surgical procedures involving bones and joints of the human body.

S.B. 1028, Relating to funding for the Texas State Technical Institute and extension programs operated by the institute.

S.B. 723, Relating to the right of fresh water supply districts to participate in certain procedures for the disposition of surplus and salvage state property.

S.B. 771, Relating to the sale, lease, transfer and cancellation of certain business opportunity contracts or agreements.

S.B. 1461, Relating to the jurisdiction of the Parks and Wildlife Department to protect Endangered Species of the State.

S.B. 149, Relating to requiring a person convicted of an offense to repay a reward paid in connection with the offense by a local crime prevention program. (As amended)

S.B. 208, Relating to the examination of witnesses and statements made before a grand jury. (As substituted and amended)

S.B. 1509, Relating to the establishment of a support program to assist persons with disabilities and their families; providing a criminal penalty. (As amended)

S.B. 843, Relating to the offense of barratry and certain contracts for legal services. (As substituted and amended)

S.B. 1400, Amending art. 717p, Tex. Civ. Stats. Ann.; relating to programs to achieve conservation of electric energy and declaring an emergency. (As amended)

S.B. 40, Relating to the assessment of minimum skills of students at the first grade level. (As amended)

S.B. 427, Relating to solicitations made in the name of law enforcement personnel; providing penalties. (As amended)

H.B. 165, Relating to the validation of certain citations and returns of process.

H.B. 316, Relating to the appeal of utility rates set by a municipality.

H.B. 694, Relating to including surveyors under the Professional Services Procurement Act.

H.B. 850, Relating to requirements for issuance of a driver's license.

H.B. 863, Relating to the continuation of the Texas Department of Labor and Standards under the new name, the Texas Department of Licensing and Regulation, and to the administration and functions of that department; providing penalties.

H.B. 1028, Relating to the offense of theft of service involving property held under a rental agreement.

H.B. 1078, Relating to the payment of ad valorem taxes on real property bequeathed to institutions of higher education.

H.B. 1111, Relating to the issuance of general obligation bonds to provide financial assistance, in whole or in part, to agricultural businesses of Texas.

H.B. 1317, Relating to the application of sales and use taxes to certain insurance services.

H.B. 1356, Relating to the allocation of motor fuels tax revenues.

H.B. 1848, Relating to the authorization of the governor to administer an oath, affidavit or affirmation.

H.B. 1860, Relating to the issuance of bonds and for State financing of the development and production of Texas products and businesses.

H.B. 2043, Relating to the property eligible for ad valorem tax abatement in a reinvestment zone.

H.B. 2061, Relating to allocation of money in the State highway fund.

H.B. 2098, Relating to a durable power of attorney for health care.

H.B. 2270, Relating to the appraisal of certain property for purposes of ad valorem taxation.

H.B. 2441, Relating to agreements by the State to indemnify against loss or damage in connection with certain art and artifacts.

H.B. 2620, Relating to sales tax on certain services performed by a temporary help service.

H.B. 2634, Relating to the attainment of educational skills as a condition of probation or parole.

H.B. 2945, Relating to taxation on the sale and transportation of natural gas.

H.B. 2990, Relating to the right of use and possession of property purchased at an ad valorem tax sale.

H.B. 3031, Relating to review of enforcement of the federal fair housing laws in this State.

H.B. 3164, Relating to the membership of the board, management and contracting authority of certain regional transportation authorities and to the withdrawal of a unit of election from those authorities.

H.B. 3187, Relating to the provision of municipal services to newly annexed areas; procedures for annexing and disannexing territory previously annexed for limited purposes and validation of annexations and disannexations by a municipality authorized to annex for limited purposes; authorizing the designation of planned unit developments in extraterritorial areas; and the extension of certain ordinances to areas of extraterritorial jurisdiction.

The House has refused to concur in Senate amendments to **H.B. 248** and has requested the appointment of a Conference Committee to consider the differences between the two houses: Stiles, Chair; Campbell, Conley of Bexar, Jones, Wilson.

The House has refused to concur in Senate amendments to **H.B. 340** and has requested the appointment of a Conference Committee to consider the differences between the two houses. The following have been appointed on the part of the House: Arnold, Chair; Shelley, Uher, Warner, Wolens.

The House has refused to concur in Senate amendments to **H.B. 1810** and has requested the appointment of a Conference Committee to consider the differences between the two houses. The following have been appointed on the part of the House: Madla, Chair; Hilderbran, R. Lewis, Martinez, Schoolcraft.

The House has concurred in Senate amendments to **H.B. 2136** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1788** by a record vote of 135 Ayes, 0 Nays, 0 Present-not-voting.

The House laid **S.B. 736** on the table subject to call.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

BILLS AND RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate, after the captions had been read, the following enrolled bills and resolutions:

S.B. 639
S.B. 1051
S.B. 1104
S.B. 1235 (Signed subject to Art. III,
Sec. 49a of the Constitution)
S.B. 1667
S.B. 1728 (Signed subject to Art. III,
Sec. 49a of the Constitution)
H.C.R. 129
H.C.R. 143
H.C.R. 200
H.B. 960
H.B. 1038
H.B. 1065
H.B. 1083
H.B. 1742
H.B. 1795
H.B. 1892
H.B. 1955
H.B. 1995
H.B. 3069

REPORTS OF STANDING COMMITTEES

Senator Parker submitted the following report for the Committee on Education:

C.S.H.B. 715
C.S.H.B. 857

Senator Brooks submitted the following report for the Committee on Health and Human Services:

H.B. 624

Senator Truan, Acting Chairman, submitted the following report for the Committee on Health and Human Services:

S.B. 1838
S.B. 1837

Senator Brooks submitted the following report for the Committee on Health and Human Services:

H.B. 1087
H.B. 1392

Senator Truan, Acting Chairman, submitted the following report for the Committee on Health and Human Services:

H.B. 1118

Senator Brooks submitted the following report for the Committee on Health and Human Services:

S.B. 1329

Senator Truan, Acting Chairman, submitted the following report for the Committee on Health and Human Services:

C.S.H.B. 1741
C.S.H.B. 2972

Senator McFarland submitted the following report for the Committee on Criminal Justice:

H.B. 310
H.B. 24
H.B. 817
H.B. 832
H.B. 1312
H.B. 1323
H.B. 2111
C.S.H.B. 1701
C.S.H.B. 1507
C.S.H.B. 1101
C.S.H.B. 1779

Senator Harris submitted the following report for the Committee on Economic Development:

H.B. 460
H.B. 976
H.B. 472 (Amended)
C.S.H.B. 1099

Senator Parmer submitted the following report for the Committee on Intergovernmental Relations:

H.B. 1874
H.B. 1325
H.B. 260
H.B. 1314
H.B. 648
H.B. 3109
H.B. 2614
H.B. 2631
S.B. 1820
C.S.H.B. 696
C.S.H.B. 1533
C.S.H.B. 1587
C.S.H.B. 302
C.S.S.B. 1379

SENATE BILLS AND RESOLUTION ON FIRST READING

On motion of Senator Uribe and by unanimous consent, the following bills and resolution were introduced, read first time and referred to the Committee indicated:

S.R. 687 by Uribe Administration
Directing the Natural Resources Subcommittee on Water to conduct an interim study on the feasibility of designating resacas as State parks and creating large sporting areas.

S.B. 1853 by Washington Criminal Justice
Relating to the offense of retaliation committed because a person reported a crime.

S.B. 1854 by Armbrister Natural Resources
Relating to the authority of navigation districts.

S.B. 1855 by Armbrister Intergovernmental Relations
Relating to operation on public roads of certain motor vehicles and to deposits to the county road and bridge fund.

S.B. 1856 by Armbrister Intergovernmental Relations
Relating to the acquisition, construction and financing of roads and turnpikes, and the creation, conversion and powers of certain entities authorized to acquire, construct and finance roads and turnpikes.

HOUSE BILLS ON FIRST READING

The following bills received from the House were read the first time and referred to the Committee indicated:

H.B. 432, To Committee on Finance.

H.B. 1434, To Committee on Intergovernmental Relations.

H.B. 1777, To Committee on Criminal Justice.

H.B. 1787, To Committee on Health and Human Services.

H.B. 2033, To Committee on State Affairs.

H.B. 2330, To Committee on Natural Resources.

H.B. 2608, To Committee on Health and Human Services.

H.B. 2645, To Committee on Education.

CO-AUTHOR OF SENATE CONCURRENT RESOLUTION 157

On motion of Senator Krier and by unanimous consent, Senator Sims will be shown as Co-author of S.C.R. 157.

CO-SPONSORS OF HOUSE BILL 2974

On motion of Senator Santiesteban and by unanimous consent, Senators Uribe and Zaffirini will be shown as Co-sponsors of H.B. 2974.

SENATE CONCURRENT RESOLUTION 106 ON SECOND READING

On motion of Senator Truan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading:

S.C.R. 106, Directing the Texas Water Commission to study funding needs for the cleanup of State registry sites.

The resolution was read second time and was adopted viva voce vote.

COMMITTEE SUBSTITUTE SENATE BILL 805 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 805, Relating to a requirement that persons placed on probation and persons released on parole or mandatory supervision submit to testing for controlled substances.

The bill was read second time and was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 805 ON THIRD READING**

Senator Zaffirini moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that C.S.S.B. 805 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

**MOTION TO PLACE
HOUSE BILL 908 ON SECOND READING**

Senator Sims moved to suspend the regular order of business to take up for consideration at this time:

H.B. 908, Relating to the water quality standards established by the Texas Water Commission and to the application of law regulating permitted but unconstructed reservoirs in certain populous counties.

On motion of Senator Sims and by unanimous consent, the motion to suspend the regular order of business was withdrawn.

HOUSE BILL 1768 ON SECOND READING

On motion of Senator Green and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1768, Relating to a preference for American steel and steel products in certain contracts for materials awarded by the State Department of Highways and Public Transportation.

The bill was read second time.

Senator Green offered the following committee amendment to the bill:

Amend **H.B. 1768** as follows:

Page 2, delete Lines 10-14 and replace with the following:

Sec. 8A. All contracts awarded by the State Department of Highways and Public Transportation for the improvement of the state highway system when the improvement is made without federal-aid must contain the same preference provisions for steel and steel products that is required under federal law when the improvement is made with federal-aid.

Page 3, after line 8, add the following language and renumber lines accordingly:

The provisions of this Act will affect no contract unless the contracts are entered into on or after the effective date of this Act.

The committee amendment was read and was adopted viva voce vote.

On motion of Senator Green and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

HOUSE BILL 1768 ON THIRD READING

Senator Green moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 1768** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
HOUSE BILL 570 ON SECOND READING**

On motion of Senator Green and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 570, Relating to matters of probate.

The bill was read second time and was passed to third reading viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 570 ON THIRD READING**

Senator Green moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 570** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

HOUSE BILL 3 ON SECOND READING

On motion of Senator Parker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 3, Relating to establishing the Texas college work-study program and the Texas educational opportunity grant program.

The bill was read second time and was passed to third reading viva voce vote.

HOUSE BILL 3 ON THIRD READING

Senator Parker moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 3** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
HOUSE BILL 526 ON SECOND READING**

On motion of Senator Carriker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 526, Relating to procedures for expunction of criminal records and files.

The bill was read second time.

(Senator Johnson in Chair)

Senator Washington offered the following amendment to the bill:

Amend **C.S.H.B. 526** as follows:

Add a new (1) on line 28, page 1 to read as follows:

(1) the person has been tried for the offense and acquitted or

Renumber the following sections accordingly.

The amendment was read and was adopted viva voce vote.

On motion of Senator Carriker and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 526 ON THIRD READING**

Senator Carriker moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 526** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

GUEST PRESENTED

Senator Brooks was recognized and presented Dr. Presley Mock, Jr., of La Porte.

Dr. Mock, participating in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians, was welcomed by the Senate and received an expression of gratitude for his service today.

HOUSE CONCURRENT RESOLUTION 277

The President laid before the Senate the following resolution:

H.C.R. 277, Commending the members of the Deer Park High School Academic Decathlon Team.

The resolution was read.

On motion of Senator Brooks and by unanimous consent, the resolution was considered immediately and was adopted viva voce vote.

GUESTS PRESENTED

Senator Brooks escorted the team, their coach, Ronny Harris, and members of the Deer Park Independent School District to the President's Rostrum for an introduction to the Senate.

**COMMITTEE SUBSTITUTE
HOUSE BILL 366 ON SECOND READING**

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 366, Relating to the regulation of certain electronic communications by solicitors; providing a criminal penalty.

The bill was read second time.

Senator Brown offered the following amendment to the bill:

Substitute the following for **H.B. 366**:

SECTION 1. Subchapter D, Chapter 35, Business & Commerce Code, is amended by adding Section 35.47 to read as follows:

Sec. 35.47. CERTAIN ELECTRONIC COMMUNICATIONS MADE FOR PURPOSE OF SALES. (a) A person may not make a telephone call or use an automatic dial announcing device to make a telephone call for the purpose of making a sale if:

(1) the person making the call or using the device knows or should have known that the called number is a mobile telephone for which the called person will be charged for that specific call; and

(2) the called person has not given consent to make such a call to the person calling or using the device or to the business enterprise for which the person is calling or using the device.

(b) A person may not make or cause to be made a transmission for the purpose of a solicitation or sale to a facsimile recording device or other telecopier for which the person or entity receiving the transmission will be charged for the transmission, unless the person or entity receiving the transmission has given, prior to the transmission, consent to make or cause to be made the transmission.

(c) On complaint of a called person that Subsection (a) or (b) of this section has been violated, the county or district attorney of the county in which the person resides shall investigate the complaint and file charges if appropriate. A telephone company serving the caller or called person is not responsible for investigating a complaint or keeping records relating to this section.

(d) A person who violates Subsection (a) or (b) of this section commits an offense. An offense under this section is a Class C misdemeanor.

SECTION 2. This Act applies only to a telephone call or transmission made on or after the effective date of this Act. A call or transmission made before that date is governed by the law in effect when the call or transmission was made, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 1989.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted by the following vote: Yeas 19, Nays 6.

Yeas: Armbrister, Bivins, Brown, Caperton, Carriker, Haley, Henderson, Johnson, Leedom, Lyon, McFarland, Montford, Parmer, Ratliff, Santiesteban, Sims, Truan, Uribe, Zaffirini.

Nays: Barrientos, Brooks, Edwards, Green, Krier, Washington.

Absent: Dickson, Glasgow, Harris, Parker, Tejeda, Whitmire.

On motion of Senator Brown and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by the following vote: Yeas 25, Nays 1.

Nays: Washington.

Absent: Dickson, Glasgow, Parker, Tejeda, Whitmire.

**COMMITTEE SUBSTITUTE
HOUSE BILL 366 ON THIRD READING**

Senator Brown moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that C.S.H.B. 366 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 1.

Nays: Washington.

Absent: Dickson, Glasgow, Harris, Tejeda, Whitmire.

The bill was read third time and was passed by the following vote: Yeas 25, Nays 1.

Nays: Washington.

Absent: Dickson, Glasgow, Parker, Tejeda, Whitmire.

**MOTION TO PLACE COMMITTEE SUBSTITUTE
HOUSE BILL 2335 ON SECOND READING**

Senator McFarland moved to suspend the regular order of business to take up for consideration at this time:

C.S.H.B. 2335, Relating to reform of the criminal justice system, including the administration of state and local correctional institutions and facilities; release on bond, probation, parole, and mandatory supervision; punishment and sentencing alternatives; employment programs for released inmates; and criminal history record information; establishing the Texas Department of Criminal Justice; providing for the issuance of bonds.

On motion of Senator McFarland and by unanimous consent, the motion to suspend the regular order of business was withdrawn.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2008 ON SECOND READING**

On motion of Senator Sims and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2008, Relating to the assessment and collection of certain penalties imposed on delinquent unemployment compensation tax payments.

The bill was read second time and was passed to third reading viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2008 ON THIRD READING**

Senator Sims moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 2008** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 959 ON SECOND READING

On motion of Senator Carriker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 959, Relating to the procedures for the setting by district judges of the compensation of certain district or county officers or employees.

The bill was read second time.

(Senator Caperton in Chair)

Senator Carriker offered the following amendment to the bill:

Amend **H.B. 959** in the following manner:

On Page One:

Sec. 1, Subsection 152.905(a), lines 10 & 11, by deleting "a district or county officer or employee that is required by law to be set by one or more district judges." and by adding the following in lieu thereof, "the county auditor, assistant auditors, and court reporters"

Sec. 1, Subsection 152.905(b), lines 12 & 13, by deleting "a district or county officer or employee" and by adding the following in lieu thereof, "the county auditor, assistant auditors, and court reporters."

Sec. 1, Subsection 152.905(d), line 20, by deleting "officer or employee" and by adding the following in lieu thereof, "county auditor, assistant auditors, and court reporters."

On Page Two:

Sec. 2, Subsection 152.031(a), line 3, by deleting the word "a" and inserting the word "the" between the words "appointing" and "county"

Sec. 3, Subsection 84.021(a), lines 18 & 19, by deleting the following, "after a hearing held in accordance with Section 152.905,"

On Page Three:

Sec. 4, Subsection 52.051(a), lines 6 & 7, by deleting the following, "at a hearing held in accordance with Section 152.905, Local Government Code." and on line 6, by adding a "." after the word "court"

The amendment was read and was adopted viva voce vote.

On motion of Senator Carriker and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

RECORD OF VOTE

Senator Montford asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 959 ON THIRD READING

Senator Carriker moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that H.B. 959 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 4.

Yeas: Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Glasgow, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Parker, Parmer, Ratliff, Santiesteban, Sims, Tejeda, Truan, Uribe, Whitmire, Zaffirini.

Nays: Armbrister, Edwards, Montford, Washington.

(President in Chair)

The bill was read third time and was passed by the following vote: Yeas 28, Nays 3.

Yeas: Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Glasgow, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Parker, Parmer, Ratliff, Santiesteban, Sims, Tejeda, Truan, Uribe, Washington, Whitmire, Zaffirini.

Nays: Armbrister, Edwards, Montford.

SENATE BILL 712 ON SECOND READING

Senator Caperton moved to suspend the regular order of business to take up for consideration at this time:

S.B. 712, Relating to the nonvoting representation of college and university students on the governing boards of their university systems.

The motion prevailed by the following vote: Yeas 20, Nays 7, Present-not voting 1.

Yeas: Armbrister, Barrientos, Brooks, Brown, Caperton, Carriker, Dickson, Edwards, Green, Haley, Johnson, Krier, Lyon, Parker, Parmer, Tejeda, Truan, Uribe, Whitmire, Zaffirini.

Nays: Bivins, Harris, Henderson, McFarland, Montford, Ratliff, Sims.

Present-not voting: Glasgow.

Absent: Leedom, Santiesteban, Washington.

The bill was read second time.

Senator Caperton offered the following amendment to the bill:

Amend S.B. 712 by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Subtitle B, Title 3, Education Code, is amended by adding Chapter 63 to read as follows:

CHAPTER 63. STUDENT INPUT TO GOVERNING BOARDS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 63.01. Definitions. In this chapter:

(1) "Member school" means any general academic teaching institution as defined in Subdivision (3) of Section 61.003 of this title.

(2) "University system" has the meaning assigned by Subdivision (10) of Section 61.003 of this title.

(3) "Governing board" or "board" has the meaning assigned by Subdivision (9) of Section 61.003 of this title.

(4) "School representative," "student representative," or "representative" means the designated representative of each member school, selected as provided for in Subchapter B of this chapter.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 63.11. STUDENT REPRESENTATION. If the students of any member school choose to participate in the program provided for in this chapter, the governing board of the university system of which that school is a member shall comply with the provisions of this chapter.

Sec. 63.12. SCHOOLS LACKING STUDENT GOVERNMENT. At member schools lacking student government, any duty assigned by this chapter to the student government shall be performed by the general student population through referendum.

Sec. 63.13. OPTIONAL PARTICIPATION. No member school shall participate in the program set forth in this chapter unless the students of the member school choose to participate through their student government. A member school may remove itself from program participation.

Sec. 63.14. STUDENT REPRESENTATIVES. (a) Each member school shall be represented by the chief executive officer of its student government. Schools lacking such a position may elect a representative through campuswide referendum.

(b) The chief executive officer may designate a person to serve in his or her stead.

Sec. 63.15. EXPENSES OF STUDENT REPRESENTATIVES. Student representatives shall serve without compensation but shall be entitled to reimbursement from board funds for actual expenses incurred in attending board meetings and in communicating with student representatives of other member schools in the same university system.

SUBCHAPTER C. BOARD RESPONSIBILITIES

Sec. 63.21. PROVISION OF INFORMATION. (a) Each student representative shall be provided with a copy of the meeting agenda a minimum of two weeks before the meeting of the board. The representative shall be notified immediately of any changes in the agenda.

(b) The student representative shall be provided with a copy of all supporting information for the meeting at the time the representative receives the agenda. The representative shall be provided immediately any additional information that is provided to board members subsequent to receipt of the agenda.

Sec. 63.22. NONEXCLUSION OF STUDENT REPRESENTATIVES. The board shall not exclude a student representative from any portion of a board meeting in which student issues will be discussed.

Sec. 63.23. POSTING OF NOTICE. Two weeks in advance of any board meeting, the board shall cause to be publicly posted at the office of the president of each member school a listing of all agenda items that would:

(1) financially impact students;

- (2) change curriculum requirements;
- (3) change graduation requirements; or
- (4) alter grading policy.

SUBCHAPTER D. POWERS AND DUTIES OF STUDENT REPRESENTATIVES

Sec. 63.31. NONVOTING LIAISON TO THE BOARD. (a) The student representative for each member school shall represent the interests of the students of that member school and shall provide insight to the board as to the perspective of students.

(b) A portion of each governing board meeting shall be set aside for the student representative for each member school to voice individual opinions, to voice the opinions of other students, to make recommendations, or to otherwise be heard regarding student issues.

Sec. 63.32. STUDENT ISSUES. Student issues shall be those issues that have a direct financial impact on students, change curriculum requirements or alter grading policy, or otherwise directly affect students. The student representatives shall determine which items on the agenda for each meeting constitute student issues.

Sec. 63.33. CONFIDENTIALITY. The student representative shall observe the same level of confidentiality as is expected of board members.

SUBCHAPTER E. SYSTEM ROUNDTABLE

Sec. 63.41. SYSTEM ROUNDTABLE. Each member school of a university system consisting of more than one member school shall be represented on a system roundtable by that school's student representative.

Sec. 63.42. POWERS AND DUTIES OF THE ROUNDTABLE. The system roundtable shall meet on a schedule to be determined by the roundtable members in order to ensure that the views presented to the board are presented in a coordinated manner. The roundtable shall meet at least once prior to the first governing board meeting of each year.

Sec. 63.43. CHAIRMAN OF THE SYSTEM ROUNDTABLE. The members of the system roundtable for each university system shall choose one of their number to serve as chair of the roundtable.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted viva voce vote.

On motion of Senator Caperton and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

RECORD OF VOTES

Senators Harris, Henderson and Montford asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

SENATE BILL 712 ON THIRD READING

Senator Caperton moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that S.B. 712 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 6.

Yeas: Armbrister, Barrientos, Brooks, Brown, Caperton, Carriker, Dickson, Edwards, Green, Haley, Henderson, Johnson, Krier, McFarland, Montford, Parker, Parmer, Ratliff, Santiesteban, Tejeda, Truan, Uribe, Whitmire, Zaffirini.

Nays: Bivins, Glasgow, Harris, Lyon, Sims, Washington.

Absent: Leedom.

The bill was read third time and was passed by the following vote: Yeas 23, Nays 7.

Yeas: Armbrister, Barrientos, Brooks, Brown, Caperton, Carriker, Dickson, Edwards, Glasgow, Green, Haley, Johnson, Krier, McFarland, Parker, Parmer, Santiesteban, Tejeda, Truan, Uribe, Washington, Whitmire, Zaffirini.

Nays: Bivins, Harris, Henderson, Lyon, Montford, Ratliff, Sims.

Absent: Leedom.

**COMMITTEE SUBSTITUTE
SENATE BILL 1550 ON SECOND READING**

The Senate resumed consideration of the following bill on its second reading and passage to engrossment:

C.S.S.B. 1550, Relating to the applicability of the Texas Workers' Compensation Act to certain employers and employees.

(The bill having been read second time on May 17, 1989, and further consideration postponed until 11:00 a.m. today)

Question - Shall the bill be passed to engrossment?

Senator Ratliff moved to postpone further consideration of **C.S.S.B. 1550** until the conclusion of today's meeting of Committee of the Whole Senate at 2:00 p.m.

Senator Carriker made a substitute motion that further consideration of **C.S.S.B. 1550** be postponed until Tuesday, May 23, 1989.

By unanimous consent, Senator Carriker withdrew the substitute motion.

By unanimous consent, Senator Ratliff's motion prevailed.

SENATE BILL 1590 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1590, Relating to the regulation of the practice of acupuncture; providing penalties.

The bill was read second time.

Senator Brooks offered the following committee amendment to the bill:

Amend **S.B. 1590** as follows:

(1) On page 2, line 3, strike "diagnosis", and substitute "assessment".

(2) On page 2, line 4, strike "diagnostic", and substitute "assessment".

(3) On page 8, line 27, add a new SECTION 13 to read as follows and renumber the subsequent SECTIONS accordingly:

"SECTION 13. LIMITATIONS OF PRACTICE. (a) If a client does not already have a western medical diagnosis for the client's specific symptoms, the practitioner shall refer the client to a physician for such a diagnosis to be made.

(b) If a client does have a western medical diagnosis for their specific symptoms, the acupuncture practitioner shall verify the diagnosis with the client's physician."

The committee amendment was read and was adopted viva voce vote.

On motion of Senator Brooks and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment viva voce vote.

RECORD OF VOTE

Senator Parmer asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

SENATE BILL 1590 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that S.B. 1590 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Dickson, Edwards, Glasgow, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, Lyon, McFarland, Montford, Parker, Ratliff, Santiesteban, Sims, Tejada, Truan, Uribe, Whitmire, Zaffirini.

Nays: Parmer, Washington.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1.

Nays: Parmer.

COMMITTEE SUBSTITUTE HOUSE BILL 318 ON SECOND READING

On motion of Senator Edwards and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 318, Relating to income eligibility for nursing home care and community care.

The bill was read second time and was passed to third reading viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 318 ON THIRD READING

Senator Edwards moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that C.S.H.B. 318 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 582 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 582, Relating to access to certain mental health records by the Texas Department of Human Services and certain other agencies.

The bill was read second time and was passed to third reading viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 582 ON THIRD READING**

Senator Zaffirini moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **C.S.H.B. 582** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

(Senator Santiesteban in Chair)

HOUSE BILL 972 ON SECOND READING

On motion of Senator Bivins and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 972, Relating to the penalty for the offense of tampering with a consumer product and to the creation of the offense of threatening to tamper with a consumer product.

The bill was read second time and was passed to third reading viva voce vote.

RECORD OF VOTE

Senator Washington asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 972 ON THIRD READING

Senator Bivins moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that **H.B. 972** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

RECORD OF VOTE

Senator Washington asked to be recorded as voting "Nay" on the final passage of the bill.

(President in Chair)

SENATE RESOLUTION 642

Senator Tejeda offered the following resolution:

WHEREAS, The Legislature of the State of Texas is deeply honored to commend the invaluable contributions of the noncommissioned officers and petty officers of the United States Armed Forces to the American people; and

WHEREAS, The week commencing with the third Monday in May, 1989, has been set aside as Texas NCO/Petty Officer Week; and

WHEREAS, It is indeed appropriate that all citizens join in honoring noncommissioned officers and petty officers who serve and have served our nation's defense forces; and

WHEREAS, These fine American men and women have traditionally been regarded as the backbone of the Armed Forces of our nation; and

WHEREAS, The Secretary and Chief of Staff of the Army have declared the Army's 1989 theme as the "Year of the NCO" to further our appreciation and acknowledgement of their priceless services in the country's defense mechanism; and

WHEREAS, The Non Commissioned Officers Association is headquartered in San Antonio with a National Capital Office (NATCO) in Alexandria, Virginia; and

WHEREAS, Qualification for membership in the Non Commissioned Officers Association is determined by service as a noncommissioned or petty officer in the United States Army, Air Force, Marine Corps, Coast Guard, National Guard, or Reserves; and

WHEREAS, Membership is currently in excess of 160,000; it is representative of all branches and components of the Armed Forces, including the retired, with a majority serving worldwide on active duty; and

WHEREAS, Most of the association's active chapters are located on or near military installations; this close association with the military community is the cornerstone by which it builds its program of legislative initiatives; and

WHEREAS, Representatives of the Non Commissioned Officers Association have appeared before the House and Senate Armed Services and Appropriations Committees each year since 1972 working with the committees having oversight authority of the appropriation of funds for such matters concerning the military; and

WHEREAS, The association is exceptionally proud to have been recognized by the 100th Congress as a federally chartered organization; it is the only military association exclusively representing enlisted members and veterans of the Armed Forces of the United States so honored; and

WHEREAS, No other group has been more diligent than these fine individuals who have made and are daily making contributions to sustain our freedom and way of life; and

WHEREAS, These dedicated individuals are without peer in their courage and devotion to duty to their country and its citizens; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 71st Legislature, hereby recognize the noncommissioned and petty officers for their meritorious service to their country; and, be it further

RESOLVED, That a copy of this Resolution be prepared as a token of highest esteem and appreciation from the Texas Senate.

The resolution was read.

On motion of Senator Johnson and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

GUESTS PRESENTED

Senators Tejeda, Zaffirini and Krier escorted the following outstanding leaders of the Non Commissioned Officers Association to the President's Rostrum: Walter Krueger, President of the Non Commissioned Officers Association (NCOA) and a retired Command Sergeant Major; Glenn Morrell, Sergeant Major of the Army, Retired, and Special Assistant to the President of the NCOA; Robert Guthrie, Director of Chapter Activities of the NCOA; Kay Jones, President of the Veterans of Greater San Antonio and retired from the Navy; and Bobby Boothe, Command Sergeant Major of the 5th Army.

Also introduced were two non commissioned officers who fought valiantly and courageously during World War II and who were awarded the nation's highest tribute, the Congressional Medal of Honor: Lucian Adams and Cleto Rodriguez.

The President presented an enrolled copy of S.R. 642, adopted by the Senate on May 15, 1989, to these honored guests.

MESSAGE FROM THE HOUSE

House Chamber
May 19, 1989

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.B. 1954, Relating to a premium tax imposed on certain life, accident and health insurers.

H.B. 2437, Relating to certain State agencies subject to, or removed from, review under the Texas Sunset Act.

S.C.R. 140, Congratulating Don Kennard on his 60th birthday.

S.C.R. 118, Honoring Cebon and Ruth Higgins.

H.C.R. 229, Recognizing National Mental Illness Awareness Week.

H.C.R. 242, Recognizing the Texas Bluebonnet Tartan as the Official Tartan of Texas.

H.C.R. 283, Designating the Texas Jazz Festival in Corpus Christi as the Official Jazz Festival of Texas.

H.C.R. 178, Commending Southwest Airlines for support of Ronald McDonald Houses.

H.C.R. 168, Requesting the Texas Rehabilitation Commission to take certain steps to improve regulation of service providers.

H.C.R. 216, Requesting the Children and Youth Services Coordinating Committee to coordinate evaluation of State child abuse prevention programs.

H.C.R. 237, Directing the State Board of Education to review the teaching of geography.

H.C.R. 270, Directing the 71st Texas Legislature and the State Department of Highways and Public Transportation to implement a 65 mph speed limit.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

(Senator Haley in Chair)

COMMITTEE SUBSTITUTE
HOUSE BILL 737 ON SECOND READING

On motion of Senator Ratliff and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 737, Relating to the regulation of home-care companion hiring services for the elderly or disabled; providing a penalty.

The bill was read second time.

Senator Ratliff offered the following amendment to the bill:

Floor Amendment No. 1

Amend C.S.H.B. 737 as follows:

(1) Delete Section 106.001(5) (Committee Printing page 1, line 41), and substitute the following:

(5) "Fee" means anything of value received directly or indirectly by a home-care companion referral service from an applicant or an employer in payment for a service provided by the referral service.

(2) In Section 106.003 (Committee Printing page 2, line 4), delete "A person" and insert "(a) Except as provided by this section, a person"

(3) In Section 106.003 (Committee Printing page 2, between lines 31 and 32), insert the following:

(b) A person who acts as a home-care companion referral service in the capacity of an owner, operator of the service, counselor, or agent or employee of the service may:

(1) require an applicant or an employer to pay one administrative fee that:

(A) does not exceed the actual cost of necessary services provided before employment to the applicant or employer by the referral service; and

(B) does not reimburse the referral service more than once for the same services; or

(2) require an applicant or an employer to pay a separate referral fee for a subsequent referral that results in the employment or reemployment of a home-care companion if:

(A) the referral is made in response to a separate, subsequent request for employment or reemployment by an applicant or an employer;

(B) the referral is not directly related to similar services previously provided by an applicant to an employer; and

(C) if the previous service was for an employer, the employer did not originally request, or indicate a need for future or periodic services.

The amendment was read and was adopted viva voce vote.

Senator Ratliff offered the following amendment to the bill:

Floor Amendment No. 2

Amend C.S.H.B. 737 as follows:

(1) After Section 1 of the bill (Committee Printing page 2, between lines 64 and 65), insert a new Section 2 to read as follows:

SECTION 2. The Texas Department on Aging shall conduct a study to assess the number of home-care companion referral services, the nature of services provided, the referrals made, and the need for regulation, and shall report to the 72nd Legislature not later than February 1, 1991, the results of the study, including any recommendations the department considers desirable.

(2) Renumber subsequent sections appropriately.

The amendment was read and was adopted viva voce vote.

On motion of Senator Ratliff and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 737 ON THIRD READING**

Senator Ratliff moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that C.S.H.B. 737 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

SENATE BILL 840 ON THIRD READING

Senator Dickson moved that the regular order of business be suspended and that S.B. 840 be placed on its third reading and final passage.

S.B. 840, Relating to the procedure by which a jury trial is waived in a criminal case.

The motion prevailed by the following vote: Yeas 22, Nays 9.

Yeas: Armbrister, Barrientos, Bivins, Brown, Carriker, Dickson, Edwards, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, McFarland, Parmer, Ratliff, Sims, Tejeda, Uribe, Whitmire, Zaffirini.

Nays: Brooks, Caperton, Glasgow, Lyon, Montford, Parker, Santiesteban, Truan, Washington.

The bill was read third time and was passed viva voce vote.

RECORD OF VOTES

Senators Brooks, Glasgow, Montford and Washington asked to be recorded as voting "Nay" on the final passage of the bill.

(President in Chair)

**COMMITTEE SUBSTITUTE
HOUSE BILL 2335 ON SECOND READING**

On motion of Senator McFarland and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2335, Relating to reform of the criminal justice system, including the administration of state and local correctional institutions and facilities; release on bond, probation, parole, and mandatory supervision; punishment and sentencing alternatives; employment programs for released inmates; and criminal history record information; establishing the Texas Department of Criminal Justice; providing for the issuance of bonds.

The bill was read second time.

Senator McFarland offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 2335** by striking all below the enacting clause and substituting in lieu thereof the following:

ARTICLE 1

SECTION 1.01. DEFINITIONS. In this article:

(1) "Board" means the Texas Board of Criminal Justice.

(2) "Department" means the Texas Department of Criminal Justice.

SECTION 1.02. DEPARTMENT RESPONSIBILITIES; HEADQUARTERS. (a) The department is the state agency with primary responsibility for:

(1) the confinement, supervision, and rehabilitation of felons;

(2) the development of a system of state and local punishment, supervision, and rehabilitation programs and facilities; and

(3) the reintegration of felons into society after release from confinement.

(b) The department is governed by the board.

(c) The board and the department shall maintain headquarters in Austin and shall attempt to locate all offices in one building or in buildings that are in close proximity to one another. This subsection does not require the institutional division to assign more than 15 people to an Austin office.

SECTION 1.03. BOARD: COMPOSITION. The board is composed of nine members appointed by the governor with the advice and consent of the senate. The governor may not appoint more than two members who reside in an area encompassed by the same administrative judicial region, as determined by Section 74.042, Government Code.

SECTION 1.04. ELIGIBILITY FOR MEMBERSHIP; REMOVAL. (a) Each member of the board must be representative of the general public. A person is not eligible for appointment as a member if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization regulated by the department or receiving funds from the department;

(2) owns, or controls directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the department or receiving funds from the department; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the department, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

(b) An employee or paid consultant of a trade association in the field of criminal justice may not be a member or employee of the board. A person who is the spouse of any employee or paid consultant of a trade association in the field of criminal justice may not be a member of the board and may not be an employee, including an employee exempt from the state's classification plan, who is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule. For the purposes of this section, a trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

(c) A person who is required to register as a lobbyist under Chapter 305, Government Code, by virtue of the person's activities for compensation in or on behalf of a profession related to the operation of the board, may not serve as a member of the board or act as the general counsel to the board.

(d) Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

(e) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) of this section for appointment to the board;

(2) does not maintain during the member's service on the board the qualifications required by Subsection (a) of this section for appointment to the board;

(3) violates a prohibition established by Subsection (b) or (c) of this section;

(4) is unable to discharge the member's duties for a substantial part of the term for which the member was appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during each calendar year or is absent from more than two consecutive regularly scheduled board meetings that the member is eligible to attend, except when the absence is excused by majority vote of the board.

(f) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

(g) If the executive director of the Texas Department of Criminal Justice has knowledge that a potential ground for removal exists, the director shall notify the chairman of the board of the ground. The chairman shall then notify the governor that a potential ground for removal exists.

SECTION 1.05. TERMS; VACANCY. (a) Members serve staggered six-year terms, with the terms of three members expiring February 1 of each odd-numbered year.

(b) In the event of a vacancy during a term, the governor shall appoint a replacement to fill the unexpired portion of the term.

SECTION 1.06. COMPENSATION OF MEMBERS. A member of the board is not entitled to compensation but is entitled to reimbursement for actual and necessary expenses as provided by the General Appropriations Act.

SECTION 1.07. ORGANIZATION OF BOARD. (a) At the beginning of a governor's term, the governor shall designate one member of the board as chairman of the board. That member shall serve as chairman at the pleasure of the governor.

(b) The board shall elect a vice-chairman of the board from among its members and may appoint committees to accomplish the duties of the board.

(c) The board may employ clerical assistance as necessary to discharge the board's duties.

SECTION 1.08. MEETINGS. (a) The board shall meet at least once in each quarter of the calendar year at a site determined by the chairman.

(b) The board may meet at other times at the call of the chairman or as provided by the rules of the board.

(c) As a specific exception to Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), the board may hold an open or executive emergency meeting by telephone conference call. The portion of a meeting that is public and held by telephone conference call shall be recorded and the recording shall be made available to be heard by the public at one or more places designated by the board.

SECTION 1.09. GENERAL POWERS AND DUTIES OF BOARD. (a) The board may adopt rules as necessary for its own procedures and for operation of the department.

(b) The board shall employ an executive director. The board shall supervise the executive director's administration of the department.

(c) The board shall approve the operating budget of the department and the department's request for appropriations.

(d) The board shall appoint the members of any advisory committees to the department.

(e) The board shall provide to its members and employees, as often as is necessary, information regarding their qualifications for office or employment under this article and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(f) The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the department.

(g) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

SECTION 1.10. EXECUTIVE DIRECTOR. (a) The executive director is responsible for the administration and enforcement of all laws relating to the department including rules implemented by the department but may delegate those responsibilities as permitted by board rule or general law.

(b) The executive director is the only person authorized to receive service on behalf of the board, department, or any division of the department.

SECTION 1.11. DIVISIONS. (a) The following divisions are established within the department:

- (1) the community justice assistance division;
- (2) the institutional division; and
- (3) the Board of Pardons and Paroles division.

(b) The executive director shall hire a director for each division in the department. Each director serves at the pleasure of the executive director.

SECTION 1.12. COMMUNITY JUSTICE ASSISTANCE DIVISION. The community justice assistance division shall:

- (1) establish minimum standards for programs, facilities, and services provided by community supervision and corrections departments;
- (2) certify and fund programs, facilities, and services for community supervision and corrections departments; and
- (3) establish a prison beds allocation formula for geographical areas served by community supervision and corrections departments.

SECTION 1.13. INSTITUTIONAL DIVISION. (a) The institutional division shall operate and manage the state prison system.

(b) The director of the institutional division may appoint employees who are certified by the Commission on Law Enforcement Officer Standards and Education as qualified to be peace officers to serve under the direction of the director and assist

the director in performing the enforcement duties of the department. An employee commissioned under this section has all the powers, privileges, and immunities of a peace officer in the performance of the employee's duties.

SECTION 1.14. BOARD OF PARDONS AND PAROLES DIVISION. The Board of Pardons and Paroles division consists of the Board of Pardons and Paroles. The division shall:

- (1) determine which prisoners are to be released on parole;
- (2) determine and enforce conditions of parole and mandatory supervision and make decisions relating to revocations of parole and mandatory supervision;
- (3) perform the constitutional duties imposed on the board by Article IV, Section 11, of the Texas Constitution; and
- (4) contract for transitional facilities for pre-parolees, parolees, and persons released to mandatory supervision.

SECTION 1.15. PERSONNEL. (a) Each division director shall hire the employees for the director's division.

(b) The executive director shall develop an intra-agency career ladder program. The program shall require intra-agency postings of all nonentry level positions concurrently with any public postings.

(c) The executive director shall develop a system of annual performance evaluations. All merit pay for department employees must be based on the system established under this subsection.

(d) The executive director shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

- (1) personnel policies, including policies related to recruitment, evaluation, selection, appointment, training, and promotion of personnel;
- (2) a comprehensive analysis of the department work force that meets federal and state guidelines;
- (3) procedures by which a determination can be made of significant underuse in the department work force of all persons for whom federal or state guidelines encourage a more equitable balance; and
- (4) reasonable methods to appropriately address those areas of significant underuse.

(e) A policy statement prepared under Subsection (d) of this section must cover an annual period, be updated at least annually, and be filed with the governor's office.

(f) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (e) of this section. The report may be made separately or as a part of other biennial reports made to the legislature.

SECTION 1.16. APPLICATION OF SUNSET ACT. The board and the department are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board and the department are abolished and this article expires September 1, 1995.

SECTION 1.17. INITIAL APPOINTMENTS. (a) The governor shall appoint the initial members of the board on or before January 1, 1990.

(b) Of the initial members, the governor shall appoint three to serve terms expiring February 1, 1991, three to serve terms expiring February 1, 1993, and three to serve terms expiring February 1, 1995. On expiration of those terms, the term of a member appointed by the governor is six years, as provided by Section 1.05 of this article.

SECTION 1.18. INITIAL EMPLOYMENT OF EXECUTIVE DIRECTOR. (a) The board shall hire the initial executive director of the Texas Department of Criminal Justice not later than June 1, 1990.

(b) The executive directors of the Texas Department of Corrections, the Board of Pardons and Paroles, and the Texas Adult Probation Commission shall direct by committee the Texas Department of Criminal Justice until the initial executive director begins employment.

SECTION 1.19. TRANSFER OF POWERS, DUTIES, OBLIGATIONS, PROPERTY, AND RECORDS. (a) On January 1, 1990, the powers, duties, and obligations of the following entities and their officers are transferred to the Texas Board of Criminal Justice:

- (1) the Texas Adult Probation Commission;
- (2) the Texas Board of Corrections and the Texas Department of Corrections; and
- (3) the Board of Pardons and Paroles.

(b) On January 1, 1990, all property and records in the custody of each entity listed in Subsection (a) of this section and all funds appropriated by the legislature for the use of the entity shall be transferred to the Texas Board of Criminal Justice. On the transfer, the entity is abolished.

(c) On January 1, 1990, an employee of an entity listed in Subsection (a) of this section becomes an employee of the Texas Department of Criminal Justice, to be assigned to a particular division within the department at the direction of the executive director.

(d) Unless a power, duty, or obligation is specifically reserved by statute to a particular division in the Texas Department of Criminal Justice, the Texas Board of Criminal Justice may assign the power, duty, or obligation to the division of its choice.

(e) A rule, form, or policy adopted by an agency listed in Subsection (a) of this section, on abolition of that agency, is a rule, form, or policy of the Texas Board of Criminal Justice.

(f) On and after January 1, 1990, a reference in the law to the:

(1) Texas Adult Probation Commission means the community justice assistance division of the Texas Department of Criminal Justice;

(2) Texas Department of Corrections means the institutional division of the Texas Department of Criminal Justice; and

(3) Board of Pardons and Paroles means the Board of Pardons and Paroles division of the Texas Department of Criminal Justice.

(g) On and after the effective date of this Act but before January 1, 1990, a power or duty provided by this Act to the:

(1) community justice assistance division of the Texas Department of Criminal Justice is a power or duty of the Texas Adult Probation Commission;

(2) institutional division of the Texas Department of Criminal Justice is a power or duty of the Texas Department of Corrections; and

(3) Board of Pardons and Paroles division of the Texas Department of Criminal Justice is a power or duty of the Board of Pardons and Paroles.

(h) On and after January 1, 1990, a reference in the law to a "probation department" or "adult probation department" means a community supervision and corrections department established under Article 42.131, Code of Criminal Procedure.

ARTICLE 2

SECTION 2.01. Section 317.005, Government Code, is amended by adding Subsection (i) to read as follows:

(i) Notwithstanding Subsection (e)(4), the board may adopt an order under this section affecting any portion of the total appropriation of a state agency for the fiscal year in which the order would be effective, if the affected agency is the Texas Adult Probation Commission, the Texas Department of Corrections, the Board of

Pardons and Paroles, or the Texas Department of Criminal Justice. This subsection expires January 31, 1991.

SECTION 2.02. Subtitle C, Title 3, Government Code, is amended by adding Chapter 328 to read as follows:

CHAPTER 328. LEGISLATIVE CRIMINAL JUSTICE BOARD

Sec. 328.001. LEGISLATIVE CRIMINAL JUSTICE BOARD. (a) The Legislative Criminal Justice Board is an agency of the legislative branch of state government.

(b) The board is composed of:

- (1) the lieutenant governor;
- (2) the speaker of the house of representatives;
- (3) the chairman of the House Corrections Committee;
- (4) the chairman of the Senate Criminal Justice Committee;
- (5) the chairman of the House Appropriations Committee;
- (6) the chairman of the Senate Finance Committee;
- (7) two state representatives appointed by the speaker; and
- (8) two senators appointed by the lieutenant governor.

Sec. 328.002. CHAIRMAN. The lieutenant governor and the speaker of the house of representatives alternate serving as chairman and vice-chairman of the board, with the lieutenant governor serving the first term as chairman. Each term as chairman is for two years concurrent with the fiscal biennium.

Sec. 328.003. QUORUM. A majority of the members of each house constitutes a quorum of the board for transaction of business.

Sec. 328.004. MEETINGS. The board shall meet at least quarterly and at other times at the call of the chair.

Sec. 328.005. POWERS AND DUTIES. (a) The board shall oversee and review the implementation of legislative criminal justice policy, including fiscal policy, by the Texas Board of Criminal Justice.

(b) The board may require information and reports from the Texas Board of Criminal Justice.

(c) For purposes of carrying out its duties, the board may administer oaths and issue subpoenas, signed by the chairman or vice-chairman, to compel the attendance of witnesses and the production of books, records, and documents. A subpoena of the board shall be served by a peace officer in the manner in which district court subpoenas are served. On application of the board, a district court of Travis County shall compel compliance with a subpoena issued by the board in the same manner for district court subpoenas.

(d) The board shall make recommendations to the legislature concerning needed changes in criminal justice and corrections policy.

(e) The Criminal Justice Policy Council, the Texas Legislative Council, and the Legislative Budget Board shall provide staff for the board as necessary to the performance of its duties.

(f) State agencies shall cooperate with and assist the board at the board's request.

Sec. 328.006. REVIEW OF COMMUNITY CORRECTIONS PROGRAMS AND PRISON BED ALLOCATIONS. The board annually shall review rules adopted by the Texas Board of Criminal Justice relating to community corrections programs and the allocation of prison admissions for the purpose of ensuring compliance with legislative intent.

SECTION 2.03. Chapter 413, Government Code, is amended by adding Sections 413.019 and 413.020 to read as follows:

Sec. 413.019. STATISTICAL ANALYSIS CENTER. The policy council shall serve as the statistical analysis center for the state and as the liaison for the state to the United States Department of Justice on criminal justice issues of interest to

the state and federal government relating to data, information systems, and research.

Sec. 413.020. SPECIAL PROJECTS. (a) Before January 1, 1991, the policy council shall prepare and report to the legislature:

(1) a comprehensive study of sentencing patterns and practices in this state;

(2) an evaluation of formulas for the fair and equitable allocation of prison beds to local jurisdictions; and

(3) a study that develops uniform definitions of the terms "recidivism" and "revocation rate."

(b) This section expires January 1, 1992.

ARTICLE 3

SECTION 3.01. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.13 to read as follows:

Art. 42.13. COMMUNITY JUSTICE ASSISTANCE DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE

Sec. 1. PURPOSE; DEFINITIONS. (a) The purpose of this article is to:

(1) allow localities to increase their involvement and responsibility in developing sentencing programs that provide effective alternatives to imprisonment for felony offenders;

(2) provide increased opportunities for felony offenders to make restitution to victims of crime through financial reimbursement or community service;

(3) provide increased use of community penalties designed specifically to meet local needs; and

(4) promote efficiency and economy in the delivery of community-based correctional programs consistent with the objectives defined by Section 1.02, Penal Code.

(b) In this article:

(1) "Board" means the Texas Board of Criminal Justice.

(2) "Department" means a community supervision and corrections department established under Article 42.131 of this code.

(3) "Division" means the community justice assistance division of the Texas Department of Criminal Justice.

Sec. 2. STANDARDS AND PROCEDURES. (a) The division shall propose and the board shall adopt reasonable rules:

(1) establishing minimum standards for programs, facilities, equipment, and other aspects of the operation of departments;

(2) establishing an application process and procedures for funding community corrections facilities; and

(3) establishing a format for community justice plans.

(b) In establishing standards relating to the operation of departments, the division shall consider guidelines previously developed and presented by the advisory committee on probation department management to the Texas Adult Probation Commission.

Sec. 3. RECORDS, REPORTS, AND INFORMATION SYSTEMS. (a) The division shall require each department to:

(1) keep financial and statistical records determined necessary by the division;

(2) submit a community justice plan, if Section 3 of Article 42.131 of this code applies to the department; and

(3) submit periodic financial audits and statistical reports to the division.

(b) The division shall develop an automated information management and tracking system that:

(1) provides a caseload management and accounting system that enables department supervision officers and caseworkers to enter and retrieve caseload data;

(2) provides the division with the statistical data it needs to support budget requests and satisfy requests for information; and

(3) is compatible with the information systems used by the institutional division and Board of Pardons and Paroles division of the department.

Sec. 4. INSPECTIONS; AUDITS. The division may inspect and evaluate a department or conduct audits of financial records of a department at any reasonable time to determine compliance with the division's rules and standards.

Sec. 5. COMMUNITY CORRECTIONS FACILITIES. (a) In order to establish and maintain community corrections facilities, the division may:

(1) develop standards for the physical plant and operation of community corrections facilities and standards for the programs offered by those facilities;

(2) fund division-managed community corrections facilities if local contractors are not available or do not meet the standards established by the division;

(3) fund contracts for management of community corrections facilities;

(4) provide funds to departments for the renovation of leased or donated buildings for use as community corrections facilities;

(5) accept ownership of real property pursuant to an agreement under which the division agrees to construct a community corrections facility and offer the facility for lease;

(6) allow departments, counties, or municipalities to accept and use buildings provided by units of local governments, including rural hospital districts, for use as community corrections facilities;

(7) provide funds to departments, counties, or municipalities to lease buildings, land, or other real property for use as community corrections facilities, lease or purchase equipment necessary for the operation of facilities, and pay other costs as necessary for the management and operation of facilities;

(8) require that all community corrections facilities be in compliance with state and local safety laws;

(9) develop standards for disciplinary rules to be imposed on residents of community corrections facilities;

(10) require departments to provide data requested by the division;

(11) be a party to a contract for correctional services if the state, on a biennial appropriations basis, commits to fund a portion of the contract; and

(12) develop standards for the granting of emergency furloughs for residents confined in community corrections facilities.

(b) Minimum standards for community corrections facilities must include requirements that a facility provide levels of security appropriate for the population served by the facility, including as a minimum a monitored and structured environment in which a resident's interior and exterior movements and activities can be supervised by specific destination and time.

(c) A facility may not offer a substance abuse treatment program unless the program is approved by the Texas Commission on Alcohol and Drug Abuse.

Sec. 6. COMMUNITY JUSTICE PLAN. (a) Beginning on September 1, 1990, the division shall require as a condition to payment of state aid to a department under Section 11 of this article that a community justice plan be submitted for the department. If a community justice council serves the

department, the council shall submit the plan required by this subsection. If a community justice council does not serve the department, the district judges managing the department shall submit the plan. A community justice council may not submit a plan under this section unless the plan is first approved by the district judges who manage the department served by the council.

(b) A community justice plan required under this section must include:

(1) a summary of services provided by or available to the department at the time the plan is submitted;

(2) a description of proposed new facilities or programs or significant expansion of existing facilities or programs and a summary of how the department proposes to use the facilities or programs, with a particular emphasis on the plans of the department to expand the department's use of:

(A) electronic monitoring programs;

(B) testing for controlled substances; and

(C) community corrections facilities, including:

(i) restitution facilities;

(ii) court residential treatment facilities;

(iii) substance abuse treatment facilities;

(iv) custody facilities and boot camps;

(v) residential centers for mentally

impaired offenders;

(vi) intermediate sanction facilities;

(vii) pre-parole transfer facilities;

(viii) halfway houses; and

(ix) work facilities;

(3) a description of services for offenders needed within the area served by the department, including services needed within an accessible radius of any facility or program that is proposed;

(4) a copy or description of any proposed contract that is required to achieve proposed facilities or programs; and

(5) a statement of commitment by the community justice council and the department to achieve a targeted level of alternative sanctions.

(c) A community justice plan submitted to the division by a department or by departments acting in cooperation may include:

(1) implementation processes for division-approved program evaluation and data collection;

(2) a description of existing and proposed personnel training programs, community service programs, and restitution programs;

(3) a description of existing and proposed programs to recruit volunteer community service programs to work with offenders served by the department; and

(4) other details or options that the community justice council wishes to include.

Sec. 7. OFFICER CERTIFICATION. (a) The division shall establish officer certification programs for department residential officers and department supervision officers. Each program must include coursework relating to the proper performance of the officer's duties and an examination prepared by the division administered at the conclusion of the coursework. The examination must test officers on knowledge required for the proper performance of their duties. Each officer who satisfactorily completes the coursework and examination shall be certified.

(b) Except as provided by Subsections (d), (e), and (f) of this section, a department may not continue to employ an officer unless the officer is exempt from certification requirements on the effective date of this Act or satisfactorily completes

the coursework and examination required by this section not later than the first anniversary of the date on which the officer begins employment with the department.

(c) The division shall provide adequate notification of the results of examinations and provide other relevant information regarding examinations as requested by examinees.

(d) The division may extend the period for the coursework and examination requirements under Subsection (b) of this section for an additional period not to exceed one year for officers employed by a department that during the initial one-year period increases hiring in order to reduce caseloads as required by law as a condition to full state funding.

(e) The division may waive certification requirements other than a fee requirement for an applicant with a valid certificate from another state that has certification requirements substantially similar to those of this state.

(f) A department may not continue to employ a residential officer unless the officer successfully completes the coursework and examination requirement under this section before the first anniversary of the date on which the officer begins employment with the department. The division shall make the first certification coursework and examination required by this subsection available not later than September 1, 1990. A residential officer employed by a department before September 1, 1990, is not required to successfully complete the examination before the first anniversary of the date the division makes the first examination available.

(g) The division may revoke or suspend a certification or reprimand a certified officer for a violation of this article or a rule of the Texas Board of Criminal Justice.

Sec. 8. TRAINING. The division may provide pre-service, in-service, and educational training and technical assistance to departments to promote compliance with the standards under this article and to assist departments in improving the operation of department services.

Sec. 9. DATA AND REPORTS FOR STATE AID. The director of a department shall present data requested by the division as necessary to determine the amount of state financial aid to which the department is entitled. A department receiving state aid shall submit reports as required by the division.

Sec. 10. PUBLIC MEETING. (a) The division may not take an action under Sections 5(2) through (7) of this article relating to a community corrections facility established after August 31, 1989, unless a public meeting is held about the proposed action before the action is taken.

(b) Before the 30th day before the date of the meeting, the division, the department that the facility is to serve, or a vendor proposing to operate the facility shall:

(1) publish notice of the date, hour, place, and subject of the hearing required by Subsection (a) of this section in three consecutive issues of a newspaper of, or in newspapers that collectively have, general circulation in the county in which the proposed facility is to be located; and

(2) mail a copy of the notice to each city council member, county commissioner, state representative, and state senator who represents the area in which the proposed facility is to be located, unless the proposed facility has been previously authorized to operate at a particular location by a community justice council under Section 3, Article 42.131, of this code.

(c) If a private vendor, other than a private vendor that operates as a nonprofit corporation, proposes to operate a facility that is the subject of a public meeting under this section, the private vendor is responsible for the costs of providing notice and holding the public meeting required by this section.

Sec. 11. PAYMENT OF STATE AID. (a) If the division determines that a department complies with division standards and if the department or judges

managing the department have submitted a community justice plan under Section 3, Article 42.131 of this code and the division determines the plan is acceptable, the division shall prepare and submit to the comptroller of public accounts vouchers for payment to the department as follows:

(1) an annual amount as provided in the General Appropriations Act for each full-time officer or each full-time equivalent employed by the department who supervises any combination of felony probationers that results in a workload unit level of between 90 and 110, as determined under Subsection (c) of this section;

(2) a per diem amount as provided in the General Appropriations Act for each misdemeanor probationer supervised by the department, other than a misdemeanor probationer under supervision after the first anniversary of the date on which the probationer was placed on probation; and

(3) an annual amount as computed by multiplying the percentage of institutional beds allocated to the department under Article 6166a-4, Revised Statutes, times the total amount provided in the General Appropriations Act for payments under this subdivision.

(b) The division may also make discretionary grants for community supervision and corrections services, including grants to departments, municipalities, or counties for the following purposes:

(1) development of pretrial and presentencing services;

(2) electronic monitoring programs, surveillance probation programs, and controlled substances testing programs;

(3) research projects to evaluate the effectiveness of community corrections programs, if the research is conducted in cooperation with the Criminal Justice Policy Council;

(4) contract services for felony probationers;

(5) residential services for misdemeanor probationers who exhibit levels of risk or needs indicating a need for confinement and treatment, as described by Subsection (d) of this section; and

(6) other purposes determined appropriate by the division and approved by the board.

(c) The division shall authorize payments under Subsection (a)(1) of this section only if the division determines that the department has made a reasonable effort to maintain workloads for supervising officers that do not exceed the following ratios:

(1) one officer or full-time equivalent per 25 cases, with a workload unit value of 4 per case, for cases requiring intensive supervision;

(2) one officer or full-time equivalent per 40 cases, with a workload unit value of 2.5 per case, for cases requiring maximum supervision;

(3) one officer or full-time equivalent per 75 cases, with a workload unit value of 1.33 per case, for cases requiring a medium level of supervision; and

(4) one officer or full-time equivalent per 100 cases, with a workload unit value of 1 per case, for cases requiring a minimum level of supervision.

(d) The division annually shall evaluate its grant payments for facilities described by Section 5 of this article by applying risk assessment instruments developed by the division to determine whether persons confined exhibit levels of risk or needs that if not addressed through the confinement and treatment in a community corrections facility make it probable that the persons would pose unacceptable levels of threat to public safety through additional criminal behavior. The division shall develop risk assessment instruments for use under this section not later than September 1, 1990.

(e) Each department, county, or municipality shall deposit all state aid received under this article in a special fund of the county treasury or municipal treasury, as

appropriate, to be used solely for the provision of services, programs, and facilities under this article or Subchapter H, Chapter 351, Local Government Code.

Sec. 12. REFUSAL OR SUSPENSION OF STATE AID. (a) The division shall adjust grant funding for facilities on the basis of annual evaluations made by the division under Section 11(d) of this article.

(b) The division shall take one or more of the following actions against a department that the division determines is not in substantial compliance with division standards:

(1) a reduction, refusal, or suspension of payment of state aid to the department; or

(2) an imposition of budget control over the department.

(c) The board shall provide for notice and a hearing in cases in which the division proposes to take an action authorized by this section. The division shall define with specificity the conduct that constitutes substantial noncompliance with division standards and shall establish the procedures to be used in imposing or waiving a sanction authorized by this section, subject to approval of the definition and the procedures by adoption by the board.

SECTION 3.02. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.131 to read as follows:

Art. 42.131. COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENTS

Sec. 1. DEFINITIONS. In this article:

(1) "Board" means the Texas Board of Criminal Justice.

(2) "Council" means a community justice council.

(3) "Department" means a community supervision and corrections department established under this article.

(4) "Division" means the community justice assistance division of the board.

Sec. 2. ESTABLISHMENT OF DEPARTMENTS. (a) The district judge or district judges trying criminal cases in each judicial district in the state shall establish a community supervision and corrections department and employ district personnel as may be necessary to conduct presentence investigations and risk assessments, supervise and rehabilitate probationers, enforce the terms and conditions of probation, and staff community corrections facilities. Both the district judges trying criminal cases and the judges of statutory county courts trying criminal cases are entitled to participate in the management of the department.

(b) If two or more judicial districts serve a county, or a district includes more than one county, one department shall serve all courts and counties in the district. However, the board may adopt rules to allow more than one department in a judicial district that includes more than one county if providing more than one department will promote administrative convenience or economy or improve services. The board may adopt rules allowing departments to contract with one another for services and facilities.

Sec. 3. COMMUNITY CORRECTIONS FACILITIES; COMMUNITY JUSTICE COUNCIL. (a) Subject to Subsection (b) of this section, a department, county, municipality, or any combination involving more than one of those entities may establish community corrections facilities of the types described by Section 5, Article 42.13, of this code.

(b) As a prerequisite to establishing a community corrections facility, a community justice council must be established, unless a board or council exists in the community on the effective date of this section that performs duties substantially similar to those imposed on a community justice council under this section. The council shall provide continuing policy guidance and direction for the development of criminal justice plans and community corrections facilities and programs. A council should consist of the following persons or their designees:

(1) a sheriff of a county to be served by the facility, chosen by the sheriffs of the counties to be served by the facility;

(2) a county commissioner or a county judge from a county to be served by the facility, chosen by the county commissioners and county judges of the counties to be served by the facility;

(3) a city council member of the most populous municipality in a county to be served by the facility, chosen by the members of the city councils of cities to be served by the facility;

(4) not more than two state legislators elected from a county to be served by the facility, chosen by the state legislators elected from the counties to be served by the facility;

(5) the presiding judge from a judicial district to be served by the facility, chosen by the district judges from the judicial districts to be served by the facility;

(6) a judge of a statutory county court exercising criminal jurisdiction in a county to be served by the facility, to be chosen by the judges of statutory county courts with criminal jurisdiction in the counties to be served by the facility;

(7) a county attorney with criminal jurisdiction from a county to be served by the facility, chosen by the county attorneys with criminal jurisdiction from the counties to be served by the facility;

(8) a district attorney or criminal district attorney from a judicial district to be served by the facility, chosen by the district attorneys or criminal district attorneys from the judicial districts to be served by the facility; and

(9) an elected member of the board of trustees of an independent school district in a county to be served by the facility, chosen by the members of the boards of trustees of independent school districts located in counties to be served by the facility.

(c) The community justice council may appoint a community justice task force to provide support staff for the development of a community justice plan. The task force may consist of any number of members, but should include:

(1) the county or regional director of the Texas Department of Human Services with responsibility for the area to be served by the facility;

(2) the chief of police of the most populous municipality to be served by the facility;

(3) the chief juvenile probation officer of the juvenile probation office serving the most populous area to be served by the facility;

(4) the superintendent of the most populous school district to be served by the facility;

(5) the supervisor of the Department of Public Safety region closest to the facility, or the supervisor's designee;

(6) the county or regional director of the Texas Department of Mental Health and Mental Retardation with responsibility for the area to be served by the facility;

(7) a substance abuse treatment professional appointed by the Council of Governments serving the area to be served by the facility;

(8) the department chief of the department to be served by the facility;

(9) the local or regional representative of the Board of Pardons and Paroles Division with responsibility for the area to be served by the facility;

(10) the representative of the Texas Employment Commission with responsibility for the area to be served by the facility;

(11) the representative of the Texas Rehabilitation Commission with responsibility for the area to be served by the facility;

(12) a licensed attorney who practices in the area to be served by the facility and whose practice consists primarily of criminal law; and

(13) a court administrator, if one serves the area to be served by the facility.

(d) A criminal justice council established under this section shall prepare a community justice plan and submit it to the Texas Board of Criminal Justice not later than September 1, 1990. The criminal justice council shall submit a revised plan to the Texas Board of Criminal Justice each year, by a date designated by the Texas Board of Criminal Justice.

Sec. 4. DEPARTMENT DIRECTOR. The judge or judges shall appoint a department director. The department director shall employ a sufficient number of officers and other employees to perform the professional and clerical work of the department.

Sec. 5. STANDARDS FOR OFFICERS. (a) Officers appointed by the department director must comply with a code of ethics developed by the division.

(b) To be eligible for appointment on or after the effective date of this Act as an officer who supervises probationers a person:

(1) must have acquired a bachelor's degree conferred by an institution of higher education accredited by an accrediting organization recognized by the Texas Higher Education Coordinating Board; and

(2) unless the bachelor's degree is in criminology, corrections, counseling, law, social work, psychology, sociology, or a related field that has been approved by the division, must have:

(A) one year of graduate study in one of those fields; or

(B) one year of experience in full-time casework, counseling, or community or group work that has been approved by the division.

(c) A person employed as a peace officer is not eligible for appointment as an officer under this section.

(d) The division may establish a waiver procedure for departments unable to hire persons meeting the requirements under Subsection (b)(2) of this section.

Sec. 6. EMPLOYEES; BENEFITS. (a) Except as provided by Subsection (c) of this section, department employees are not state employees. The department shall contract with the most populous county served by the department for insurance and retirement plans, and the employees are governed by the same personnel policies as the employees of that county.

(b) The judicial districts served by a department shall pay the salaries of department employees.

(c) Department employees are state employees for the purposes of Chapter 104, Civil Practice and Remedies Code, and Article 8309g, Revised Statutes.

Sec. 7. STATE AID, GRANTS, GIFTS. A department may accept state aid and grants and gifts from any source for the purpose of financing programs and facilities. A municipality may make grants to a department for those purposes.

Sec. 8. COUNTIES' FINANCIAL RESPONSIBILITIES. (a) The county or counties served by a department shall provide physical facilities, equipment, and utilities for a department. The division shall monitor the support a county provides under this section and determine whether a county provides support that meets the standards for minimum support established by the division. If the division determines that a county's support is insufficient, the division may impose on the department a sanction authorized by Section 12, Article 42.13, of this code.

(b) If a department serves two or more counties, those counties may enter into an agreement for the distribution of the expenses of facilities, equipment, and utilities.

Sec. 9. DISTRICT'S FINANCIAL RESPONSIBILITIES. (a) The district judge or judges may expend district funds in order to provide expanded facilities, equipment, and utilities if:

(1) the department needs to increase its personnel in order to provide more effective services;

(2) the county or counties certify to the judge or judges that they have neither adequate space in county-owned buildings nor adequate funds to lease additional physical facilities, purchase additional equipment, or pay for additional utilities required by the department; and

(3) the county or counties provide facilities, equipment, and utilities at or above the levels required by the division.

(b) The division shall set as the level of contribution a county or counties must meet or exceed to receive district funds under Subsection (a) of this section a level not lower than the average level provided by the county or counties during the fiscal years of 1983-87.

Sec. 10. STATE FUNDS OR GUARANTEES FOR CORRECTIONS FACILITIES. The district judge or judges may authorize expenditures of funds provided by the division to the department for the purposes of providing facilities, equipment, and utilities for community corrections facilities if:

(1) the community justice council recommends the expenditures; and

(2) the division provides funds for the purpose of assisting in the establishment or improvement of the facilities.

Sec. 11. PRETRIAL SERVICES. The department may operate programs for the supervision and rehabilitation of persons in pretrial intervention programs. Programs may include testing for controlled substances. Persons in pretrial intervention programs may be supervised for a period not to exceed one year and may be assessed a supervisory fee, a program fee, or both fees, provided that the total amount of fees does not exceed \$500.

SECTION 3.03. Section 19, Chapter 212, Acts of the 40th Legislature, Regular Session, 1927 (Article 6166r, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 19. The director [manager] shall make suitable provision and regulations for the safe [and speedy] transportation of prisoners from counties where sentenced to the State penitentiary by the sheriffs of such respective counties if such sheriffs are willing to perform such services as cheaply as said commission can have it done otherwise. Said transportation shall be on State account and in no instance shall the prisoners be carried direct from the county jails to the State farm, but shall first be carried to the receiving station as designated by the institutional division of the Texas Department of Criminal Justice [Prison Board] where the character of labor which each prisoner may reasonably perform shall be determined. Upon the arrival of each prisoner at such receiving station, the manager shall cause a statement to be made by the prisoner, giving a brief history of his life, and showing where he has resided, the names and post-office addresses of his immediate relatives, and such other facts as will tend to show his past habits and character; and the manager shall, by correspondence, or otherwise verify or disprove such statements, if practicable, and shall preserve the record and information so obtained for future reference.

SECTION 3.04. Title 108, Revised Statutes, is amended by adding Article 6166a-4 to read as follows:

Art. 6166a-4. ALLOCATION FORMULA. (a) The Texas Board of Criminal Justice shall develop, adopt, and enforce an allocation formula that fairly and equitably allocates to each county or group of counties served by a community corrections and supervision department the number of institutional division admissions allocated to the county or counties until sufficient capacity is available in the institutional division. In devising the formula, the board shall consider relevant factors for each county or group of counties served by a department and shall assign weights to those factors as determined appropriate by the board. The factors shall include:

(1) the percentage of prison admissions for the entire state that were used by the county or counties in the preceding 12 months;

(2) the percentage of the state's violent index crime that occurred in the county or counties in the preceding 12 months;

(3) the percentage of the state's total index crime that occurred in the county or counties in the preceding 12 months;

(4) the percentage of the state's arrests under the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes) that occurred in the county or counties in the preceding 12 months;

(5) the percentage of the state's population that is 18 years of age or older but under 44 residing in the county or counties; and

(6) the percentage of the state's total unemployment in the county or counties.

(b) If the board is unable to obtain for a factor listed in Subsection (a) of this article information for the preceding 12-month period, the board shall consider the most recent information available for that factor.

(c) The board may waive the allocation formula under this article for a county that experiences a rapid increase in persons convicted of felonies for reasons other than traditional sentencing practices in the county.

(d) The board shall adopt the first formula required by this section not later than February 1, 1990, and shall revise the formula on an annual basis.

SECTION 3.05. Section 3, The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. DEFINITIONS. As used in this Act:

(1) "local government" means a county; a home rule city or a city, village, or town organized under the general laws of this state; a special district; a school district; a junior college district; any other legally constituted political subdivision of the State of Texas or any adjoining state; a community supervision and corrections department established under Section 2, Article 42.131, Code of Criminal Procedure; or a combination of political subdivisions.

(2) "governmental functions and services" means all or part of any function or service included within the following general areas: police protection and detention services; fire protection; streets, roads, and drainage; public health and welfare; parks; recreation; library services; museum services; waste disposal; planning; engineering; administrative functions; and such other governmental functions which are of mutual concern to the contracting parties.

(3) "administrative functions" means functions normally associated with the routine operation of government such as tax assessment and collection, personnel services, purchasing, data processing, warehousing, equipment repair, and printing.

SECTION 3.06. Section 11.35, Education Code, is amended to read as follows:

Sec. 11.35. HIGH SCHOOL EQUIVALENCY EXAMINATIONS. (a) The State Board of Education shall provide for the administration of high school equivalency examinations. A ~~[Any]~~ person ~~[over the age of 17]~~ who does not have a high school diploma may take the examination in accordance with the rules and regulations promulgated by the board if the person is over the age of 17 or:

(1) is 16 years of age or older; and

(2) a public agency providing supervision of the person or having custody of the person under a court order recommends that the person take the examination.

(b) The board by rule shall fix and require payment of a fee as a condition to the issuance of a high school equivalency certificate and a copy of the scores of the examinations. The fee must be reasonable and designed to cover the administrative costs of issuing the certificate and a copy of the scores.

SECTION 3.07. Article 42.121, Code of Criminal Procedure, is repealed.

ARTICLE 4

SECTION 4.01. Section 12.34, Penal Code, is amended to read as follows:

Sec. 12.34. **THIRD-DEGREE FELONY PUNISHMENT.** (a) An individual adjudged guilty of a felony of the third degree shall be punished by:

(1) confinement in the Texas Department of Corrections for any term of not more than 10 years or less than 2 years; or

(2) confinement in a community correctional facility for any term of not more than 1 year.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the third degree may be punished by a fine not to exceed \$10,000 [~~\$5,000~~].

SECTION 4.02. Section 12.44, Penal Code, is amended to read as follows:

Sec. 12.44. **REDUCTION OF THIRD-DEGREE FELONY PUNISHMENT TO MISDEMEANOR PUNISHMENT.** (a) A court may ~~set aside a judgment or verdict of guilty of a felony of the third degree and enter a judgment of guilt and~~ punish a defendant convicted of a third degree felony by imposing the punishment for a Class A misdemeanor if, after considering the gravity and circumstances of the felony committed and the history, character, and rehabilitative needs of the defendant, the court finds that such ~~punishment~~ ~~[sentence]~~ would best serve the ends of justice.

(b) When a court is authorized to impose punishment ~~[enter judgment of guilt and sentence]~~ for a lesser category of offense as provided in Subsection (a) of this section, the court may authorize the prosecuting attorney to prosecute initially for the lesser category of offense.

SECTION 4.03. Chapter 17, Code of Criminal Procedure, is amended by adding Article 17.42 to read as follows:

Art. 17.42. HOME CONFINEMENT, ELECTRONIC MONITORING, AND DRUG TESTING AS CONDITION. (a) A magistrate may require as a condition of release on bond that the defendant submit to:

(1) home confinement and electronic monitoring under the supervision of an agency designated by the magistrate; or

(2) testing on a weekly basis for the presence of a controlled substance in the defendant's body.

(b) In this article, "controlled substance" has the meaning assigned by Section 1.02(4), Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

(c) If a defendant violates a condition of home confinement and electronic monitoring, refuses to submit to a test for controlled substances, or submits to a test for controlled substances and the test indicates the presence of a controlled substance in the defendant's body, the magistrate may revoke the bond and order the defendant arrested.

(d) The community justice assistance division of the Texas Department of Criminal Justice may provide grants to counties to implement electronic monitoring programs authorized by this article.

SECTION 4.04. Section 3(a), Article 37.07, Code of Criminal Procedure, is amended to read as follows:

(a) Regardless of the plea and whether the punishment be assessed by the judge or the jury, evidence may, as permitted by the Rules of Evidence, be offered by the state and the defendant as to any matter the court deems relevant to sentencing, including the prior criminal record of the defendant, his general reputation and his character. The term prior criminal record means a final conviction in a court of record, or a probated or suspended sentence that has occurred prior to trial, or any final conviction material to the offense charged. A court may consider as a factor in mitigating punishment the conduct of a defendant while participating in a

program under Article 17.40 or 17.42(a) of this code as a condition of release on bail. Additionally, notwithstanding Rule 609(d), Texas Rules of Criminal Evidence, evidence may be offered by the state and the defendant of an adjudication of delinquency based on a violation by the defendant of a penal law of the grade of felony unless:

(1) the adjudication is based on conduct committed more than five years before the commission of the offense for which the person is being tried; and

(2) in the five years preceding the date of the commission of the offense for which the person is being tried, the person did not engage in conduct for which the person has been adjudicated as a delinquent child or a child in need of supervision and did not commit an offense for which the person has been convicted.

SECTION 4.05. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.011 to read as follows:

Art. 42.011. RISK ASSESSMENT INSTRUMENTS. (a) Not later than the 30th day after the date on which a court pronounces sentence in a felony case, the court shall submit a risk assessment instrument to the community justice assistance division of the Texas Department of Criminal Justice on a form provided by the division.

(b) The division shall develop and distribute forms for use under Subsection (a) of this article not later than September 1, 1990.

SECTION 4.06. Section 4, Article 42.03, Code of Criminal Procedure, is amended to read as follows:

Sec. 4. When a defendant who has been sentenced to imprisonment in the Department of Corrections has spent time in jail pending trial and sentence or pending appeal, the judge of the sentencing court shall direct the sheriff to attach to the commitment papers a statement assessing the defendant's conduct while in jail. ~~[On the basis of the statement, the Department of Corrections shall grant the defendant such credit for good behavior for the time spent in jail as he would have earned had he been in the custody of the department.]~~

SECTION 4.07. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.033 to read as follows:

Art. 42.033. SENTENCE TO SERVE TIME DURING OFF-WORK HOURS. (a) Where jail time has been awarded to a person sentenced for a misdemeanor or sentenced to confinement in the county jail for a felony, the trial judge, at the time of the pronouncement of sentence or at any time while the defendant is serving the sentence, when in the judge's discretion the ends of justice would best be served, may permit the defendant to serve the defendant's sentence during his off-work hours or on weekends. The judge may require bail of the defendant to ensure the faithful performance of the sentence. The judge may attach conditions regarding the employment, travel, and other conduct of the defendant during the performance of such a sentence.

(b) The court may impose as a condition to permitting a defendant to serve the jail time assessed during off-work hours or on weekends an additional requirement that the defendant make any of the following payments to the court, agencies, or persons, or that the defendant execute a letter and direct it to the defendant's employer directing the employer to deduct from the defendant's salary an amount directed by the court, which is to be sent by the employer to the clerk of the court. The money received by the court under this section may be used to pay the following expenses as directed by the court:

(1) the support of the defendant's dependents, if necessary;

(2) the defendant's documented personal, business, and travel expenses;

(3) reimbursement of the general fund of the county for the maintenance of the defendant in jail; and

(4) installment payments on restitution, fines, and court costs ordered by the court.

(c) The condition imposed under Subsection (b) of this section is not binding on an employer, except that income withheld for child support is governed by Chapter 14, Family Code.

(d) The court may permit the defendant to serve the defendant's sentence during the defendant's off-work hours or on weekends in order for the defendant to continue employment if the court imposes confinement for failure to pay a fine or court costs, as punishment for criminal nonsupport under Section 25.05, Penal Code, or for contempt of a court order for periodic payments for the support of a child.

(e) The court may permit the defendant to seek employment or obtain medical, psychological, or substance abuse treatment or counseling or obtain training or needed education under the same terms and conditions that apply to employment under this article.

SECTION 4.08. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.034 to read as follows:

Art. 42.034. COUNTY JAIL WORK RELEASE PROGRAM. (a) If jail time has been awarded to a person sentenced for a misdemeanor or sentenced to confinement in the county jail for a felony, the trial judge at the time of pronouncement of sentence or at any time while the defendant is serving the sentence, when in the judge's discretion the ends of justice would best be served, may permit the defendant to serve an alternate term for the same period of time in the county jail work release program of the county in which the offense occurred if:

(1) the trier of fact determines that the defendant did not cause the serious bodily injury or death of another as a result of the commission of the offense; and

(2) the judgment for the offense does not contain an affirmative finding under Section 3g(a)(2), Article 42.12, of this code.

(b) A defendant sentenced under this section who would otherwise be sentenced to confinement in jail may earn good conduct credit in the same manner as provided by Section 1, Chapter 461, Acts of the 54th Legislature, Regular Session, 1955 (Article 5118a, Vernon's Texas Civil Statutes), but only while actually confined.

(c) A sheriff or an employee of a sheriff's department is not liable for damages arising from an act or failure to act by the sheriff or employee in connection with a work program operated under this section if the act or failure to act was performed in an official capacity.

SECTION 4.09. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.035 to read as follows:

Art. 42.035. ELECTRONIC MONITORING. (a) A court in a county served by a district probation office that has an electronic monitoring program approved by the Texas Adult Probation Commission may require a defendant to serve all or part of a sentence of confinement in county jail by submitting to electronic monitoring rather than being confined in the county jail.

(b) A defendant who submits to electronic monitoring under Subsection (a) of this section discharges a sentence of confinement without deductions, good conduct time credits, or commutations.

SECTION 4.10. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.036 to read as follows:

Art. 42.036. COMMUNITY SERVICE. (a) A court may require a defendant to serve all or part of a sentence of confinement in county jail by performing

community service rather than by being confined in county jail unless the sentence of confinement was imposed by the jury in the case.

(b) In its order requiring a defendant to participate in community service work, the court must specify:

(1) the number of hours the defendant is required to work;
(2) the entity or organization for which the defendant is required to
work;

(3) the project on which the defendant is required to work; and
(4) whether the district probation department or a court-related
services office will perform the administrative duties required by the placement of
the defendant in the community service program.

(c) The court may order the defendant to perform community service work under this article only for a governmental entity or a nonprofit organization that provides services to the general public that enhance social welfare and the general well-being of the community. A governmental entity or nonprofit organization that accepts a defendant under this section to perform community service must agree to supervise the defendant in the performance of the defendant's work and report on the defendant's work to the district probation department or court-related services office.

(d) The court may require bail of a defendant to ensure the defendant's faithful performance of community service and may attach conditions to the bail as it determines are proper.

(e) A court may not order a defendant to perform more than 16 hours per week of community service under this section unless the court determines that requiring the defendant to work additional hours does not work a hardship on the defendant or the defendant's dependents.

(f) A defendant is considered to have served one day in jail for each eight hours or fraction of eight hours of community service performed under this section.

(g) An officer or an employee of a governmental entity is not liable for damages arising from an act or failure to act by the officer or employee in connection with a community service program operated under this section if the act or failure to act was performed in an official capacity.

SECTION 4.11. Article 42.08(a), Code of Criminal Procedure, is amended to read as follows:

(a) When the same defendant has been convicted in two or more cases, judgment and sentence shall be pronounced in each case in the same manner as if there had been but one conviction. Except as provided by Sections (b) and (c) of this article, in the discretion of the court, the judgment in the second and subsequent convictions may either be that the sentence imposed or suspended shall begin when the judgment and the sentence imposed or suspended in the preceding conviction has ceased to operate, or that the sentence imposed or suspended shall run concurrently with the other case or cases, and sentence and execution shall be accordingly; provided, however, that the cumulative total of suspended sentences in felony cases shall not exceed 10 years, and the cumulative total of suspended sentences in misdemeanor cases shall not exceed the maximum period of imprisonment in jail applicable to the misdemeanor offenses, though in no event more than three [two] years, including extensions of periods of probation under Section 24, Article 42.12, of this code, if none of the offenses are offenses under Article 67011-1, Revised Statutes, or four years, including extensions, if any of the offenses are offenses under Article 67011-1, Revised Statutes.

SECTION 4.12. Section 8(a), Article 42.09, Code of Criminal Procedure, is amended to read as follows:

(a) A county that transfers a defendant to the Department of Corrections under this Article shall deliver to the director of the department:

(1) a copy of the judgment entered pursuant to Article 42.01 of this code, completed on a standardized felony judgment form described by Section 4 of that Article;

(2) a copy of any order revoking probation and imposing sentence pursuant to Section 8 of Article 42.12 of this code, including:

(A) any amounts owed for restitution, fines, and court costs, completed on a standardized felony judgment form described by Section 4 of Article 42.01 of this code; and

(B) a copy of the client supervision plan prepared for the defendant by the adult probation department supervising the defendant, if such a plan was prepared;

(3) a written report that states the nature and the seriousness of each offense and that states the citation to the provision or provisions of the Penal Code or other law under which the defendant was convicted;

(4) a copy of the victim impact statement, if one has been prepared in the case under Article 56.03 of this code;

(5) a statement as to whether there was a change in venue in the case and, if so, the names of the county prosecuting the offense and the county in which the case was tried; and

(6) a copy of the record of arrest for each offense;

(7) information regarding the criminal history of the defendant;

(8) a copy of the indictment or information for each offense; and

(9) a checklist sent by the department to the county and completed

by the county in a manner indicating that the documents required by this subsection and Subsection (c) of this section accompany the defendant.

SECTION 4.13. Article 43.09, Code of Criminal Procedure, is amended to read as follows:

Art. 43.09. FINE DISCHARGED. (a) When a defendant is convicted of a misdemeanor and his punishment is assessed at a pecuniary fine, if he is unable to pay the fine and costs adjudged against him, he may for such time as will satisfy the judgment be put to work in the workhouse, or on the county farm, or public improvements of the county or a political subdivision located in whole or in part in the county, as provided in the succeeding Article; or if there be no such workhouse, farm or improvements, he shall be imprisoned in jail for a sufficient length of time to discharge the full amount of fine and costs adjudged against him; rating such ~~labor or~~ imprisonment at \$50 ~~[\$45]~~ for each day and rating such labor at \$50 for each day ~~[thereof]~~; provided, however, that the defendant may pay the pecuniary fine assessed against him at any time while he is serving at work in the workhouse, or on the county farm, or on the public improvements of the county or a political subdivision located in whole or in part in the county, or while he is serving his jail sentence, and in such instances he shall be entitled to the [a] credit he has earned under this subsection during the time ~~[of \$45 for each day or fraction of a day]~~ that he has served and he shall only be required to pay his balance of the pecuniary fine assessed against him. A defendant who performs labor under this article during a day in which he is imprisoned is entitled to both the credit for imprisonment and the credit for labor provided by this article.

(b) In its discretion, the court may order that for each day's confinement served by a defendant under this Article, the defendant receive credit toward payment of the pecuniary fine and credit toward payment of costs adjudged against the defendant. Additionally, the court may order that the defendant receive credit under this Article for each day's confinement served by the defendant as punishment for the offense.

(c) In its discretion, the court may order that a defendant serving concurrent, but not consecutive, sentences for two or more misdemeanors may, for each day

served, receive credit toward the satisfaction of costs and fines imposed for each separate offense.

(d) Notwithstanding any other provision of this Act, in its discretion, the court or the sheriff of the county may grant an additional two days credit for each day served to any inmate participating in an approved [county] work program under this article or a[;] rehabilitation [program], restitution [program], or education program.

(e) A court in a county served by a probation department that has an electronic monitoring program approved by the Texas Adult Probation Commission may require a defendant who is unable to pay a fine or costs to discharge all or part of the fine or costs by submitting to electronic monitoring. A defendant that submits to electronic monitoring under this subsection discharges fines and costs in the same manner as if the defendant were confined in county jail.

(f) A court may require a defendant who is unable to pay a fine or costs to discharge all or part of the fine or costs by performing community service.

(g) In its order requiring a defendant to participate in community service work under Subsection (f) of this article, the court must specify:

(1) the number of hours the defendant is required to work;

(2) the entity or organization for which the defendant is required to work;

(3) the project on which the defendant is required to work; and

(4) whether the probation department or a court-related services office will perform the administrative duties required by the placement of the defendant in the community service program.

(h) The court may order the defendant to perform community service work under Subsection (f) of this article only for a governmental entity or a nonprofit organization that provides services to the general public that enhance social welfare and the general well-being of the community. A governmental entity or nonprofit organization that accepts a defendant under Subsection (f) of this article to perform community service must agree to supervise the defendant in the performance of the defendant's work and report on the defendant's work to the district probation department or court-related services office.

(i) The court may require bail of a defendant to ensure the defendant's faithful performance of community service under Subsection (f) of this article and may attach conditions to the bail as it determines are proper.

(j) A court may not order a defendant to perform more than 16 hours per week of community service under Subsection (f) of this article unless the court determines that requiring the defendant to work additional hours does not work a hardship on the defendant or the defendant's dependents.

(k) A defendant is considered to have discharged \$50 of fines or costs for each eight hours of community service performed under Subsection (f) of this article.

SECTION 4.14. Article 43.10, Code of Criminal Procedure, is amended to read as follows:

Art. 43.10. TO DO MANUAL LABOR. Where the punishment assessed in a conviction for misdemeanor is confinement in jail for more than one day, or where in such conviction the punishment is assessed only at a pecuniary fine and the party so convicted is unable to pay the fine and costs adjudged against him, those so convicted shall be required to do manual labor in accordance with the provisions of this Article under the following rules and regulations:

1. Each commissioners court may provide for the erection of a workhouse and the establishment of a county farm in connection therewith for the purpose of utilizing the labor of said parties so convicted;

2. Such farms and workhouses shall be under the control and management of the sheriff, and the sheriff may adopt such rules and regulations not

inconsistent with the rules and regulations of the Texas Commission on Jail Standards and with the laws as the sheriff deems necessary;

3. Such overseers and guards may be employed by the sheriff under the authority of the commissioners court as may be necessary to prevent escapes and to enforce such labor, and they shall be paid out of the county treasury such compensation as the commissioners court may prescribe;

4. They shall be put to labor upon public works, including public works for a political subdivision located in whole or in part in the county;

5. One who from age, disease, or other physical or mental disability is unable to do manual labor shall not be required to work. His inability to do manual labor may be determined by a physician appointed for that purpose by the county judge or the commissioners court, who shall be paid for such service such compensation as said court may allow; and

6. For each day of manual labor, in addition to any other credits allowed by law, a prisoner is entitled to have one day deducted from each sentence he is serving. The deduction authorized by this article ~~[Act]~~, when combined with the deduction required by Article 42.10, Code of Criminal Procedure~~[-1965]~~, may not exceed two-thirds (2/3) of the sentence.

SECTION 4.15. Chapter 44, Code of Criminal Procedure, is amended by adding Article 44.041 to read as follows:

Art. 44.041. CONDITIONS IN LIEU OF BOND. (a) If a defendant is confined in county jail pending appeal and is eligible for release on bond pending appeal but is financially unable to make bond, the court may release the defendant without bond pending the conclusion of the appeal only if the court determines that release under this article is reasonable given the circumstances of the defendant's offense and the sentence imposed.

(b) A court that releases a defendant under this article must require the defendant to participate in a program under Article 42.033, 42.034, 42.035, or 42.036 of this code during the pendency of the appeal. The defendant may not receive credit toward completion of the defendant's sentence while participating in a program required by this subsection.

SECTION 4.16. Sections 1(a), (c), and (d), Chapter 586, Acts of the 68th Legislature, Regular Session, 1983 (Article 5118b, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The sheriff of each county may attempt to secure employment for each prisoner sentenced to the county jail work release program under ~~[Section 6;]~~ Article 42.034 ~~[42.03]~~, Code of Criminal Procedure~~[-1965]~~.

(c) At the time of sentencing or at a later date, the court sentencing a prisoner may direct the sheriff not to deduct the cost described under Subdivision (1) of Subsection (b) of this section or to deduct only a specified portion of the cost if the court determines that the full deduction would cause a significant financial hardship to the prisoner's dependents ~~[family of the defendant]~~.

(d) If the sheriff does not find employment for a prisoner who would otherwise be sentenced to imprisonment in the Texas Department of Corrections, the sheriff shall ~~[transfer the prisoner to]:~~

(1) transfer the prisoner to the sheriff of a county who agrees to accept the prisoner as a participant in the county jail work release program; or

(2) retain the prisoner in the county jail for employment as soon as possible in a jail work release program ~~[the department, if no sheriff agrees to accept the prisoner].~~

(e) A sheriff or an employee of a sheriff's department is not liable for damages arising from an act or failure to act by the sheriff or employee in connection with a work program operated under this section if the act or failure to act was performed in an official capacity.

SECTION 4.17. Article 42.12, Code of Criminal Procedure, is amended to read as follows:

Art. 42.12. ADULT PROBATION ~~[LAW~~

~~[A.—Purpose of Article and Definitions]~~

Sec. 1. **PURPOSE.** It is the purpose of this Article to place wholly within the State courts of appropriate jurisdiction the responsibility for determining when the imposition of sentence in certain cases shall be suspended, the conditions of probation, and the supervision of probationers, in consonance with the powers assigned to the judicial branch of this government by the Constitution of Texas. It is the purpose of this Article to remove from existing statutes the limitations, other than questions of constitutionality, that have acted as barriers to effective systems of probations in the public interest.

Sec. 2. **DEFINITIONS.** In ~~[This Article may be cited as the “Adult Probation Law”.~~

~~[Unless the context otherwise requires, the following definitions shall apply to the specified words and phrases as used in] this Article:~~

(1) ~~[a:]~~ “Courts” shall mean the courts of record having original criminal jurisdiction.[:]

(2) ~~[b:]~~ “Probation” shall mean the supervised release of a convicted defendant by a court under a continuum of programs and sanctions with conditions imposed by the court for a specified period during which the imposition of sentence is suspended.[:]

(3) ~~[c:]~~ “Probation officer” shall mean either a person duly appointed by one or more courts of record having original criminal jurisdiction[:]; to supervise defendants placed on probation; or a person designated by such courts for such duties on a part-time basis.[:]

(4) ~~[d:]~~ “Probationer” means a defendant who is on probation.

~~[B.—Probations]~~

Sec. 3. **COURT ORDERED PROBATION.** The judges of the courts of the State of Texas having original jurisdiction of criminal actions, when it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public as well as the defendant will be subserved thereby, shall have the power, after conviction or a plea of guilty or nolo contendere for any crime or offense, where the maximum punishment assessed against the defendant does not exceed ten years imprisonment, to suspend the imposition of the sentence and may place the defendant on probation or impose a fine applicable to the offense committed and also place the defendant on probation as hereinafter provided. Except as otherwise provided by this section, in [In] all felony cases where the punishment is assessed by the Court it may fix the period of probation without regard to the term of punishment assessed, but in no event may the period of probation be greater than 10 years or less than the minimum prescribed for the offense for which the defendant was convicted. In a misdemeanor case in which confinement is imposed by the court or in a third-degree felony case punished under Section 12.34(a)(2), Penal Code, the period of probation shall be for a period of time not to exceed the maximum confinement applicable to the offense or two years, whichever period is greater. Any such person placed on probation, whether in a trial by jury or before the court, shall be under the supervision of such court.

Sec. 3g. **LIMITATION ON COURT ORDERED PROBATION.** (a) The provisions of Section [Sections] 3 [and 3c] of this article [Article] do not apply:

(1) to a defendant adjudged guilty of an offense defined by the following sections of the Penal Code:

(A) Section 19.03 (Capital murder);

(B) Section 20.04 (Aggravated kidnapping);

(C) Section 22.021 (Aggravated sexual assault);

(D) Section 29.03 (Aggravated robbery); or

(2) to a defendant when it is shown that the defendant used or exhibited a deadly weapon as defined in Section 1.07(a)(11), Penal Code, during the commission of a felony offense or during immediate flight therefrom. Upon affirmative finding that the defendant used or exhibited a deadly weapon during the commission of an offense or during immediate flight therefrom, the trial court shall enter the finding in the judgment of the court. Upon an affirmative finding that the deadly weapon the defendant used or exhibited was a firearm, the court shall enter that finding in its judgment.

(b) If there is an affirmative finding that the defendant convicted of a felony of the second degree or higher used or exhibited a firearm during the commission or flight from commission of the offense and the defendant is granted probation, the court may order the defendant confined in the Texas Department of Corrections for not less than 60 and not more than 120 days. At any time after the defendant has served 60 days in the custody of the Department of Corrections, the sentencing judge, on his own motion or on motion of the defendant, may order the defendant released to probation. The Department of Corrections shall release the defendant to probation after he has served 120 days.

~~[(c) The provisions of Section 3d of this Article do not apply to a defendant charged with or adjudged guilty of an offense under Section 4.052 or 4.053 Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), or an offense listed in Section 4.012(b) of that Act.]~~

Sec. 4 [3a]. JURY RECOMMENDED PROBATION. (a) When there is a felony conviction in any court of this State and the punishment assessed by the jury shall not exceed ten years, the jury may recommend probation for a period of any term of years authorized for the offense for which the defendant was convicted, but in no event for more than ten years, upon written sworn motion made therefor by the defendant, filed before the trial begins. When the jury recommends probation, it may also assess a fine applicable to the offense for which the defendant was convicted. When the trial is to a jury, and the defendant has no counsel, the court shall inform the defendant of his right to make such motion, and the court shall appoint counsel to prepare and present same, if desired by the defendant. In no case shall probation be recommended by the jury except when the sworn motion and proof shall show, and the jury shall find in their verdict that the defendant has never before been convicted of a felony in this or any other State. This law is not to be construed as preventing the jury from passing on the guilt of the defendant, but he may enter a plea of not guilty. In all eligible cases, probation shall be granted by the court, if the jury recommends it in their verdict, for the period recommended by the jury.

(b) Where there is a misdemeanor conviction in any court of this state and the punishment assessed by the jury shall be by imprisonment in jail or by a fine or by both such fine and imprisonment, the jury may recommend probation for a period of time not to exceed two years ~~[the maximum imprisonment applicable to such offense of which the defendant is convicted]~~, upon sworn motion made therefor by the defendant, filed before the penalty stage of the trial begins. When the jury recommends probation, it may recommend that the imprisonment or fine or both such fine and imprisonment found in its verdict may be probated. ~~[If the jury recommends probation for a person convicted of an offense under Article 6701-1, Revised Statutes, and punished under Subsection (c) of that article, it may recommend that any operator's, commercial operator's, or chauffeur's license issued to the defendant under Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), not be suspended.]~~ When the trial is to a jury and the defendant has no counsel, the court shall inform the defendant of his right to make such motion, and the court shall

appoint counsel to prepare and present same, if desired by the defendant. In no case shall probation be recommended by the jury except when the defendant, before the trial began, had filed a sworn statement that the defendant has never before been convicted of a felony, and after conviction and before the penalty stage of the trial began, the defendant shall have filed a sworn motion for probation and the proof shall show and the jury shall find in their verdict that the defendant has never before been convicted of a felony in this or any other state. This law is not to be construed as preventing the jury from passing on the guilt of the defendant, but the defendant may enter a plea of not guilty. In all eligible cases, probation shall be granted by the court, if the jury recommends it in their verdict.

(c) This section does not prohibit a court from granting probation in a case if the jury in the case does not recommend probation. [If probation is granted by the jury in a misdemeanor case, the court may impose only those conditions which are set out in Section 6, 6a, or 6b hereof. The court may impose any one or all of those conditions. If probation is granted by the jury for a person convicted of an offense under Article 670H-1, Revised Statutes, and punished under Subsection (c) of that article, the court shall impose as a condition the condition set out in Section 6d of this article.]

[Sec. 3b. Where probation is recommended by the verdict of a jury as provided for in Section 3a above, a defendant's probation shall not be revoked during his good behavior, so long as he is within the jurisdiction of the court and his residence is known, except in accordance with the provisions of Section 8 of this Article. If such a defendant has no counsel, it shall be the duty of the court to inform him of his right to show cause why his probation should not be revoked; and if such a defendant requests such right, the court shall appoint counsel in accordance with Articles 26.04 and 26.05 of this Code to prepare and present the same; and in all other respects the procedure set forth in said Section 8 of this Article shall be followed.]

[Sec. 3c. Nothing herein shall limit the power of the court to grant a probation of sentence regardless of the recommendation of the jury or prior conviction of the defendant.]

Sec. 5 [3d]. DEFERRED ADJUDICATION. (a) Except as provided by Subsection (d) of this section, when in its opinion the best interest of society and the defendant will be served, the court may, after receiving a plea of guilty or plea of nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt, and place the defendant on probation. The court shall inform the defendant orally or in writing of the possible consequences under Subsection (b) of this section of a violation of probation. If the information is provided orally, the court must record and maintain the court's statement to the defendant. In a felony case, the period of probation may not exceed 10 years. In a misdemeanor case, the period of probation may not exceed two years [the maximum period of confinement prescribed for the offense]. The court may impose a fine applicable to the offense and require any reasonable terms and conditions of probation[; including any of the conditions enumerated in Sections 6 and 6a of this Article]. However, upon written motion of the defendant requesting final adjudication filed within 30 days after entering such plea and the deferment of adjudication, the court shall proceed to final adjudication as in all other cases.

(b) On violation of a condition of probation imposed under Subsection (a) of this section, the defendant may be arrested and detained as provided in Section 24 [8] of this Article. The defendant is entitled to a hearing limited to the determination by the court of whether it proceeds with an adjudication of guilt on the original charge. No appeal may be taken from this determination. After an adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of

sentence, granting of probation, and defendant's appeal continue as if the adjudication of guilt had not been deferred.

(c) On expiration of a probationary period imposed under Subsection (a) of this section, if the court has not proceeded to adjudication of guilt, the court shall dismiss the proceedings against the defendant and discharge him. The court may dismiss the proceedings and discharge the defendant prior to the expiration of the term of probation if in its opinion the best interest of society and the defendant will be served. A dismissal and discharge under this section may not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense, except that upon conviction of a subsequent offense, the fact that the defendant had previously received probation shall be admissible before the court or jury to be considered on the issue of penalty.

(d) This section does not apply to a defendant charged with an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, an offense under Section 4.052 or 4.053, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), an offense listed in Section 4.012(b) of that Act, an offense under Article 67011-1, Revised Statutes, an offense under Section 34, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), or an offense under Section 32(c), Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes).

Sec. 6 [3e]. CONTINUING COURT JURISDICTION IN FELONY CASES. (a) For the purposes of this section, the jurisdiction of a court in which a sentence requiring confinement in the Texas Department of Corrections is imposed [for conviction (of a felony)] shall continue for 180 days from the date the execution of the sentence actually begins. ~~Before~~ [After the expiration of 60 days but prior to] the expiration of 180 days from the date the execution of the sentence actually begins, the judge of the court that imposed such sentence may on his own motion, on the motion of the attorney representing the state, or on the written motion of the defendant, suspend further execution of the sentence [imposed] and place the defendant on probation under the terms and conditions of this article, if in the opinion of the judge the defendant would not benefit from further incarceration and [in a penitentiary. Probation may be granted under this section only if]:

- (1) the defendant is otherwise eligible for probation under this article; [and]
- (2) the defendant had never before been incarcerated in a penitentiary serving a sentence for a felony; and
- (3) the offense for which the defendant was convicted was other than those defined by Section 19.02, 20.04, 22.021, 22.03, 22.04(a)(1), (2), or (3), 29.03, 36.02, 38.07, 71.02 or a felony of the second degree under Section 38.10, Penal Code.

(b) If a court imposes a sentence under Section 12.34(a)(2), Penal Code, the period of time during which the court may suspend further execution of the sentence and place the defendant on probation runs from the 60th day after the date of sentencing until the date the sentence expires.

(c) When the defendant or the attorney representing the state files a written motion requesting suspension by the court of further execution of the sentence and placement of the defendant on probation, and when requested to do so by the court, the clerk of the court shall request a copy of the defendant's record while incarcerated from the Texas Department of Corrections or, if the defendant is incarcerated in county jail, from the sheriff. Upon receipt of such request, the Texas Department of Corrections or the sheriff shall forward to the court, as soon as possible, a full and complete copy of the defendant's record while incarcerated. When the defendant files a written motion requesting suspension of further execution of the sentence and placement on probation, he shall immediately deliver

or cause to be delivered a true and correct copy of the motion to the office of the ~~[prosecuting]~~ attorney representing the state.

(d) ~~[(c)]~~ The court may deny the motion without a hearing but may not grant the motion without holding a hearing and providing the attorney representing ~~[for]~~ the state and the defendant the opportunity to present evidence on the motion.

Sec. 7 ~~[3f]~~. CONTINUING COURT JURISDICTION IN MISDEMEANOR CASES. (a) For the purposes of this section, the jurisdiction of the courts in this state in which a sentence requiring confinement in a jail is imposed for conviction of a misdemeanor shall continue for a period equal to ~~[of 90 days from the date the execution of]~~ the sentence imposed [actually begins]. ~~The [After the expiration of 10 days but prior to 90 days from the date the execution of the sentence actually begins, the]~~ judge of the court that imposed such sentence may on his own motion, on the motion of the attorney representing the state, or on the written motion of the defendant suspend further execution of the sentence ~~[imposed]~~ and place the defendant on probation under the terms and conditions of this article, if prior to the execution of that sentence the defendant had never been incarcerated in a penitentiary or jail serving a sentence for a felony or misdemeanor and in the opinion of the judge the defendant would not benefit from further incarceration ~~[in a jail]~~.

(b) When the defendant files a written motion with the court requesting suspension of further execution of the sentence and placement on probation or when requested to do so by the judge, the clerk of the court shall request a copy of the defendant's record while incarcerated from the agency operating the jail where the defendant is incarcerated. Upon receipt of such request, the agency operating the jail where the defendant is incarcerated shall forward to the court as soon as possible a full and complete copy of the defendant's record while incarcerated.

(c) The court may deny the motion without a hearing but may not grant a motion without holding a hearing and allowing the attorney representing the state and the defendant to present evidence in the case.

Sec. 8 ~~[3h]~~. ALTERNATIVE INCARCERATION PROBATION. (a) For the purposes of this section, the jurisdiction of a court in which a sentence requiring confinement in the Texas Department of Corrections is imposed for conviction of a felony shall continue for 90 days from the date the execution of the sentence actually begins. After the expiration of 75 days but prior to the expiration of 90 days from the date the execution of the sentence actually begins, the judge of the court that imposed the sentence may suspend further execution of the sentence imposed and place the defendant on probation under the terms and conditions of this article, if in the opinion of the judge the defendant would not benefit from further incarceration in a penitentiary. The court shall clearly indicate in its order placing the defendant on probation under this section that the court is not retaining jurisdiction over the defendant for the purposes of Section 6 ~~[3c]~~ of this article. Probation may be granted under this section only if:

(1) the defendant is otherwise eligible for probation under this article;
 (2) the defendant is a male 17 years of age or older but younger than 26 years and does not have a physical or mental handicap that precludes strenuous physical activity; and

(3) the defendant had never before been incarcerated in a penitentiary serving a sentence for a felony.

(b) On the date the execution of a sentence begins for a defendant placed on probation under this section, the probationer shall begin participation in a program in the Texas Department of Corrections under Article 6203c-9, Revised Statutes.

(c) If a court requests of the Texas Department of Corrections the record of a defendant placed on probation under this section, the department shall promptly send the record to the court.

Sec. 9 [4]. PRESENTENCE INVESTIGATIONS. (a) Except as provided by Subsection [Subsections] (b) [~~and (h)~~] of this section, prior to the imposition of sentence by the court in a criminal case the court shall direct a probation officer to report to the court in writing on the circumstances of the offense with which the defendant is charged, the amount of restitution necessary to adequately compensate a victim of the offense, the criminal and social history of the defendant, and any other information relating to the defendant or the offense requested by the court. It is not necessary that the report contain a sentencing recommendation, but the report must contain a proposed client supervision plan describing programs and sanctions that the probation department would provide the defendant if the defendant were granted probation.

(b) The court is not required to direct a probation officer to prepare a report if:

(1) the defendant requests that a report not be made and the court agrees to the request; or

(2) the court finds that there is sufficient information in the record to permit the meaningful exercise of sentencing discretion and the court explains this finding on the record.

(c) The court may not inspect a report and the contents of the report may not be disclosed to any person unless:

(1) the defendant pleads guilty or nolo contendere or is convicted of the offense; or

(2) the defendant, in writing, authorizes the judge to inspect the report.

(d) Before sentencing a defendant, the court shall permit the defendant or his counsel to read the presentence report.

(e) The court shall allow the defendant or his attorney to comment on the report and, with the approval of the court, introduce testimony or other information alleging a factual inaccuracy in the report.

(f) The court shall allow the attorney representing the state access to any information made available to the defendant under this section.

(g) The probation officer making a report under this section shall send a copy of the report to an institution to which the defendant is committed.

(h) On a determination by the court that alcohol or drug abuse may have contributed to the commission of the offense, the [Except as otherwise provided by this subsection, if a defendant is charged with an offense under Article 67011-1, Revised Statutes, and the offense is punishable under Subsection (c) of that article, the] court shall direct a probation officer approved by the probation department or the court or a person, program, or other [person or] agency approved by the Texas Commission on Alcohol and Drug Abuse, [the court or the probation department for that purpose] to conduct an evaluation to determine the appropriateness of, and a course of conduct necessary for, alcohol or drug rehabilitation for a [the] defendant and to report that evaluation to the court. The evaluation shall be made:

(1) after arrest and before conviction, if requested by the defendant;

(2) after conviction and before sentencing, if the court assesses punishment in the case;

(3) after sentencing and before the entry of a final judgment, if the jury assesses punishment in the case; or

(4) after probation is granted, if the evaluation is required as a condition of probation under Section 13 [6b] of this article.

Sec. 10 [5]. AUTHORITY TO IMPOSE, MODIFY, OR REVOKE PROBATION. (a) Only the court in which the defendant was tried may grant probation, impose [fix or alter] conditions, revoke the probation, or discharge the defendant, unless the court has transferred jurisdiction of the case to another court

with the latter's consent. Except as provided by Subsection (d) of this section, only the court may alter conditions of probation. In a felony case, only the judge who originally sentenced the defendant may suspend execution thereof and place the defendant under probation pursuant to Section 6 [3e] of this article except that if the judge who originally sentenced the defendant is deceased or disabled or if the office is vacant and a motion is filed in accordance with Section 6 [3e] of this article, the clerk of the court shall promptly forward a copy of the motion to the presiding judge of the administrative judicial district for that court, who may deny the motion without a hearing or appoint a judge to hold a hearing on the motion.

(b) After a defendant has been placed on probation, jurisdiction of the case may be transferred to a court of the same rank in this State having geographical jurisdiction where the defendant is residing or where a violation of the conditions of probation occurs. Upon transfer, the clerk of the court of original jurisdiction shall forward a transcript of such portions of the record as the transferring judge shall direct to the court accepting jurisdiction, which latter court shall thereafter proceed as if the trial and conviction had occurred in that court.

(c) Any court having geographical jurisdiction where the defendant is residing or where a violation of the conditions of probation occurs may issue a warrant for his arrest, but the determination of action to be taken after arrest shall be only by the court having jurisdiction of the case at the time the action is taken.

(d) A court that places a defendant on probation may authorize the probation officer supervising the probationer or a magistrate appointed by the district courts in the county that give preference to criminal cases to modify the conditions of probation for the limited purpose of transferring the probationer to different programs within the probation program.

(e) If a probation officer or magistrate modifies the conditions of probation, the probation officer or magistrate shall deliver a copy of the modified conditions to the probationer and note the date of delivery of the copy in the probationer's file. If the probationer agrees to the modification in writing, the probation officer or magistrate shall file a copy of the modified conditions with the district clerk and the conditions shall be enforced as modified. If the probationer does not agree to the modification in writing, the probation officer or magistrate shall refer the case to the court for modification by the judge in the manner provided by Section 24 of this article.

Sec. 11 [6]. BASIC CONDITIONS OF PROBATION. (a) The court having jurisdiction of the case shall determine the terms and conditions of probation and may, at any time, during the period of probation alter or modify the conditions; provided, however, that the clerk of the court shall furnish a copy of such terms and conditions to the probationer, and shall note the date of delivery of such copy on the docket. Terms and conditions of probation may include, but shall not be limited to, the conditions that the probationer shall:

- (1) Commit no offense against the laws of this State or of any other State or of the United States;
- (2) Avoid injurious or vicious habits;
- (3) Avoid persons or places of disreputable or harmful character;
- (4) Report to the probation officer as directed by the judge or probation officer and obey all rules and regulations of the probation department;
- (5) Permit the probation officer to visit him at his home or elsewhere;
- (6) Work faithfully at suitable employment as far as possible;
- (7) Remain within a specified place;
- (8) Pay his fine, if one be assessed, and all court costs whether a fine be assessed or not, in one or several sums, and make restitution or reparation in any sum that the court shall determine;
- (9) Support his dependents;
- (10) Participate, for a time specified by the court ~~[and subject to the same conditions imposed on community-service probationers by Sections 10A(c);~~

(d), (g), and (h) of this article,] in any community-based program, including a community-service work program designated by the court;

(11) Reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending him in the case, if counsel was appointed, or if he was represented by a county-paid public defender, in an amount that would have been paid to an appointed attorney had the county not had a public defender;

(12) Remain under custodial supervision in a community-based facility, obey all rules and regulations of such facility, and pay a percentage of his income to the facility for room and board;

(13) Pay a percentage of his income to his dependents for their support while under custodial suspension in a community-based facility;

(14) Pay a percentage of his income to the victim of the offense, if any, to compensate the victim for any property damage or medical expenses sustained by the victim as a direct result of the commission of the offense;

(15) ~~Attend psychological counseling sessions at the direction of the probation officer and at the probationer's own expense, if the probationer was sentenced for an offense under Section 21.11, 22.011, 22.021, or 22.04, Penal Code;~~

~~[(16) Participate in an intensive probation program described by Section 3.11, Article 42.121 of this code, at the direction of the court or the probation officer;~~

~~[(17)] Submit to testing for controlled substances;~~

(16) ~~[(18)] Attend counseling sessions for substance abusers or participate in substance abuse treatment services in a program or facility approved or licensed by the Texas Commission on Alcohol and Drug Abuse, if the person was sentenced for an offense involving controlled substances or the court determines that the defendant's use of controlled substances was connected to the commission of the offense; [and]~~

(17) ~~[(19)] Participate in a program at the direction of the probation officer that teaches functionally illiterate persons to read; and~~

~~[(18) With the consent of the victim of a misdemeanor offense or of any offense under Title 7, Penal Code, participate in victim-defendant mediation for the purpose of making restitution to the victim.]~~

(b) ~~A court may not order a probationer to make any payments as a term or condition of probation, except for fines, court costs, restitution to the victim, and other terms or conditions expressly authorized by law. [If the court grants probation to a defendant and requires the defendant to serve a probationary term in a community rehabilitation center, the court may require as a condition of probation that the defendant secure employment and shall require as a condition of probation that the defendant obey all rules and regulations of the center.]~~

~~[(c) If the court grants probation to a person convicted of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 67011-1, Revised Statutes, the court may require as a condition of probation that the person participate, for a time specified by the court and subject to the same conditions imposed on community-service probationers by Section 10A of this article, in a community-service work program designated by the court.]~~

~~[(d) If the court grants probation to a person convicted of an offense described by Article 17.41(a) of this code, the court may require as a condition of probation that the defendant not directly communicate with the victim of the offense or go near a residence, school, or other location, as specifically described in the copy of terms and conditions, frequented by the victim. In imposing the condition, the court may grant the defendant supervised access to the victim. To the extent that a condition imposed under this subsection conflicts with an existing court order granting possession of or access to a child, the condition imposed under this~~

subsection prevails for a period specified by the court granting probation, not to exceed 90 days.

[(e) A court may not order a probationer to make any payments as a term and condition of probation, except for fines, court costs, restitution of the victim, and other terms and conditions expressly authorized by statute.

[(f) If the court grants probation to a person convicted of an offense under Section 21.11, 22.011, 22.021, or 22.04, Penal Code, the court may require the probationer to pay all or a part of the reasonable and necessary costs incurred by the victim for psychological counseling made necessary by the offense, upon a finding that the probationer is financially able to make payment. Any payments ordered under this subsection may not extend past one year from the date of the order.

[Sec. 6a. (a) Except as otherwise provided by this subsection, a court granting probation shall fix a fee of not less than \$25 and not more than \$40 per month to be paid to the court by the probationer during the probationary period. The court may make payment of the fee a condition of granting or continuing the probation. The court may waive or reduce the fee or suspend a monthly payment of the fee if it determines that payment of the fee would cause the probationer a significant financial hardship.

[(b) The court shall deposit the fees received under Subsection (a) of this section in the special fund of the county treasury provided by Section 4.05(b), Article 42.121 of this Code, to be used for the same purposes for which state aid may be used under that section.

[(c) A court receiving a probationer for supervision as authorized by Article 42.11 of this code may impose on the probationer any term of probation authorized by Section 6 of this article and may require the probationer to pay the fee authorized by Subsection (a) of this section. Fees received under this section shall be deposited in the same manner as required by Subsection (b) of this section.]

Sec. 12 [6b]. **DETENTION AS A CONDITION OF PROBATION.** [(a)] When the court having jurisdiction of a misdemeanor [the] case grants probation to the defendant, [in addition to the conditions imposed under Section 6 of this article;] the court may require as a condition of probation that the defendant submit to a period of detention in a county jail or community corrections facility [penal institution] to serve a term of imprisonment not to exceed 90 [30] days. In a felony case the court may require as a condition of probation that the defendant submit to a period of detention in a county jail to serve a term of imprisonment not to exceed one year [or one-third of the sentence whichever is lesser].

Sec. 13. **DWI PROBATION.** (a) [(b)] A court granting probation to a defendant convicted of an offense under Article 67011-1, Revised Statutes, and punished under Subsection (d), (e), or (f) of that article shall require as a condition of probation that the defendant submit to:

(1) 72 hours of detention in a jail if the defendant was convicted under Subsection (d) of Article 67011-1, Revised Statutes[; as amended]; 10 days of detention in a jail if the defendant was convicted under Subsection (e) of Article 67011-1, Revised Statutes[; as amended]; or 30 days of detention in a jail if the defendant was convicted under Subsection (f) of Article 67011-1, Revised Statutes[; as amended]; and

(2) an evaluation by a probation officer[; by a person approved by the probation department;] or by a person, program, or facility approved by the Texas Commission on Alcohol and Drug Abuse for the purpose of having the facility prescribe and carry out a course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence condition.

(b) [(c)] A court granting probation to a defendant convicted of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, shall require as

a condition of probation that the defendant submit to a period of detention in a penal institution to serve a term of confinement of not less than 120 days.

(c) ~~[(d)]~~ If the director of a facility to which a person is referred under Subdivision (2) of Subsection (a) ~~[(b)]~~ of this section ~~[article]~~ determines that the person is not making a good faith effort to participate in a program of rehabilitation, the director shall notify the court that referred the person of that fact.

(d) ~~[(e)]~~ If a court requires as a condition of probation that the defendant participate in a prescribed course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence condition, the court shall require that the defendant pay for all or part of the cost of such rehabilitation based on the defendant's ability to pay. The court may, in its discretion, credit such cost paid by the defendant against the fine assessed. In making a determination of a defendant's ability to pay the cost of rehabilitation under this subsection, the court shall consider whether the defendant has insurance coverage that will pay for rehabilitation.

(e) ~~[(f)]~~ The imprisonment imposed shall be treated as a condition of probation, and in the event of a sentence of imprisonment upon the revocation of probation, the term of imprisonment served hereunder shall be credited toward service of such subsequent imprisonment.

(f) ~~[(g)]~~ If a court grants probation to a defendant convicted of an offense under Article 67011-1, Revised Statutes, and punished under Subsection (c) of that article, and if before receiving probation the defendant has not submitted to an evaluation under Section 9 ~~[(4)(b)]~~ of this article, the court shall require the defendant to submit to the evaluation as a condition of probation. If the evaluation indicates to the court that the defendant is in need of treatment for drug or alcohol dependency, the court shall require the defendant to submit to that treatment as a condition of probation in a program or facility approved or licensed by the Texas Commission on Alcohol and Drug Abuse.

(g) If the jury recommends probation for a person convicted of an offense under Article 67011-1, Revised Statutes, and punished under Subsection (c) of that article, it may recommend that any operator's, commercial operator's, or chauffeur's license issued to the defendant under Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), not be suspended.

(h) If a person convicted of an offense under Article 67011-1, Revised Statutes, is punished under Subsection (c) of that article and is placed on probation, the court shall require, as a condition of the probation, that the defendant attend and successfully complete before the 181st day after the day probation is granted an educational program jointly approved by the Texas Commission on Alcohol and Drug Abuse, the Department of Public Safety, the Traffic Safety Section of the State Department of Highways and Public Transportation, and the Texas Adult Probation Commission designed to rehabilitate persons who have driven while intoxicated. The Texas Commission on Alcohol and Drug Abuse shall publish the jointly approved rules and shall monitor, coordinate, and provide training to persons providing the educational programs. The Texas Commission on Alcohol and Drug Abuse is responsible for the administration of the certification of approved educational programs and may charge a nonrefundable application fee for the initial certification of approval and for renewal of a certificate. The judge may waive the educational program requirement, however, if the defendant by a motion in writing shows good cause. In determining good cause, the judge may consider but is not limited to: the offender's school and work schedule, the offender's health, the distance that the offender must travel to attend an educational program, and the fact that the offender resides out of state, has no valid driver's license, or does not have access to transportation. The judge shall set out the finding of good cause in the judgment. If a person is required, as a condition of probation, to attend an

educational program, the court clerk shall immediately report that fact to the Department of Public Safety, on a form prescribed by the department, for inclusion in the person's driving record. The report must include the beginning date of the person's probation. Upon the successful completion of the educational program, the person shall give notice to the probation department. The probation department shall then forward the notice to the court clerk. The court clerk shall then report the date of successful completion of the educational program to the Department of Public Safety for inclusion in the person's driving record. If the department does not receive notice that a person required to complete an educational program has successfully completed the program within the period required by this section, as shown on department records, the department shall suspend the person's driver's license, permit, or privilege or prohibit the person from obtaining a license or permit, as provided by Section 24(g)(2), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes). This subsection does not apply to a defendant if a jury recommends probation for the defendant and also recommends that the defendant's driver's license not be suspended.

(i) If a person convicted of an offense under Article 67011-1, Revised Statutes, or Section 19.05(a)(2), Penal Code, is placed on probation, the court may require as a condition of probation that the defendant not operate a motor vehicle unless the vehicle is equipped with a device that uses a deep-lung breath analysis mechanism to make impractical the operation of the motor vehicle if ethyl alcohol is detected in the breath of the operator. The court shall require the defendant to obtain the device at his own cost. The Department of Public Safety shall approve devices for use under this subsection. The provisions of Section 23A(f), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), apply to the approval of a device under this subsection and the consequences of that approval. Notwithstanding the provisions of this section, if a person is required to operate a motor vehicle in the course and scope of the person's employment and if the vehicle is owned by the employer, the person may operate that vehicle without installation of an approved ignition interlock device if the employer has been notified of that driving privilege restriction and if proof of that notification is with the vehicle. This employment exemption does not apply, however, if the business entity that owns the vehicle is owned or controlled by the person whose driving privilege has been restricted.

(j) The court may require or permit a person who was previously convicted of an offense under Article 67011-1, Revised Statutes, and who was required to attend an educational program under Subsection (h) of this section as a condition of probation, to attend an educational program under Subsection (h) of this section with a curriculum for repeat offenders approved by the Texas Commission on Alcohol and Drug Abuse if the court determines that attendance at a program would be in the person's best interest.

(k) Notwithstanding Section 24(g), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), if the court, under Subsection (h) of this section, permits or requires a person to attend an educational program as a condition of probation, and the person has previously been convicted of an offense under Article 67011-1, Revised Statutes, and has previously been required to attend such a program, the court shall automatically suspend the driver's license, permit, or operating privilege of that person for a period determined by the court according to the following schedule:

(1) not less than 90 days or more than 365 days, if the person is punished under Subsection (c), Article 67011-1, Revised Statutes, whether or not the punishment is increased under Subsection (f) of that article; or

(2) not less than 180 days or more than two years, if the person is punished under Subsection (d) or (e), Article 67011-1, Revised Statutes, whether or not the punishment is increased under Subsection (f) of that article.

(1) If the Department of Public Safety receives notice that a person has been required or permitted to attend an educational program under Subsection (h) of this section, but the court has not ordered a period of suspension, the department shall suspend the person's driver's license, permit, or operating privilege, or shall issue an order prohibiting the person from obtaining a license or permit for a period of 365 days.

Sec. 14. CHILD ABUSERS AND SEX OFFENDERS; SPECIAL CONDITIONS. (a) If the court grants probation to a person convicted of an offense described by Article 17.41(a) of this code, the court may require as a condition of probation that the defendant not directly communicate with the victim of the offense or go near a residence, school, or other location, as specifically described in the copy of terms and conditions, frequented by the victim. In imposing the condition, the court may grant the defendant supervised access to the victim. To the extent that a condition imposed under this subsection conflicts with an existing court order granting possession of or access to a child, the condition imposed under this subsection prevails for a period specified by the court granting probation, not to exceed 90 days.

(b) If the court grants probation to a person convicted of an offense under Section 21.11, 22.011, 22.021, or 22.04, Penal Code, the court may require the probationer to attend psychological counseling sessions at the direction of the probation officer and may require the probationer to pay all or a part of the reasonable and necessary costs incurred by the victim for psychological counseling made necessary by the offense, upon a finding that the probationer is financially able to make payment. Any payments ordered under this subsection may not extend past one year from the date of the order.

Sec. 15 [6c]. RESTITUTION. (a) If the court requires a probationer to make restitution to a victim of the probationer's offense, and [if] a payment is received under [Subdivision h or n of Section 6 of] this article from the [a] probationer for transmittal to a victim of the [an] offense, [and the victim cannot be located,] the probation department that receives the payment for disbursement to the victim shall immediately deposit the payment in an interest-bearing account in the department having original jurisdiction. The department shall transmit the payment to the victim as soon as practicable.

(b) If a victim cannot be located, immediately after receiving a final payment in satisfaction of an order of restitution for the victim the probation department shall attempt to notify the victim of that fact by certified mail, mailed to the last known address of the victim. If a victim then makes a claim for payment, the probation department promptly shall remit the payment to the victim. Not earlier than the fifth anniversary of the date on which a probation department mails notice under this subsection, if the victim has not made a claim for payment [the payment is not claimed by the victim before the expiration of four years after the date on which the first unsuccessful attempt to locate the victim after full restitution has been made], the probation department shall transfer the payment from the interest-bearing account to the comptroller of public accounts, after deducting five percent of the payment as a collection fee and deducting any interest accrued on the payment. The comptroller shall deposit the payment in the state treasury to the credit of the compensation to victims of crime auxiliary fund.

(c) The collection fee and the accrued interest shall be deposited in the special fund of the county treasury provided by Section 11, Article 42.13, [Section 4.05(b); Article 42.121,] of this code to be used for the same purposes for which state aid may be used under that section. The probation department has a maximum of 121

days after the four-year expiration date to transfer the funds to the comptroller's office. Failure to comply with the 121-day deadline will result in a five percent collection fee penalty calculated from the total deposit and all interest attributable to the unclaimed funds.

(d) If the victim of the offense claims the payment during the four-year period in which the payment is held in the interest-bearing account, the probation department shall pay the victim the amount of the original payment, less any interest earned while holding the payment. After the payment has been transferred to the comptroller, the probation department has no liability in regard to the payment, and any claim for the payment must be made to the comptroller. If the victim makes a claim to the comptroller, the comptroller shall pay the victim the amount of the original payment, less the collection fee, from the compensation to victims of crime auxiliary fund.

Sec. 16 [6d]. WORK PROBATION. (a) A court granting probation to a defendant convicted of a felony may require as a condition of probation that the defendant work a specified number of hours in a supervision work program authorized under this section. The amount of work hours may not be less than 40 hours and may not be more than 1,000 hours. The court may not require the defendant to work more than eight hours during any week. The court shall make a good-faith effort to place the defendant in a type of work for which the defendant's previous job experience makes the defendant most suited.

(b) The director of a probation department may contract with state agencies or political subdivisions of the state, using defendants required to participate in a work program under this section, to perform tasks contracted for by the agency or subdivision. Proceeds from a contract entered into under this subsection shall be used by the probation department to offset expenses incurred by the department in supervising probationers participating in the work program. Any proceeds in excess of the amount needed to offset the expenses, including the purchase of liability insurance and workers' compensation coverage for probationers performing community service work, shall be remitted by the director of the probation department to the Texas Adult Probation Commission. Proceeds received by the commission under this subsection shall be used to offset expenses incurred by the commission in assisting probation departments to establish and administer programs under this section. Any proceeds in excess of the amount needed to offset the expenses shall be remitted by the commission to the comptroller of public accounts, to be deposited in the general revenue fund.

(c) ~~[This section does not limit the authority of the court to impose any additional condition of probation authorized by this article.~~

~~[(d) After a hearing on a motion to revoke probation at which it is proved that the defendant violated one or more conditions of his probation, but before revoking probation, the court shall consider whether, taking into account the nature and seriousness of the violation or violations, the interests of society and of the defendant would best be served by modifying probation to assess a specified number of hours in a work program under this section.~~

~~[(e)] This section may not be used by a court in a manner that results in a loss of jobs by employees of the state or any political subdivision of the state.~~

~~[(d) [(f)] State agencies and political subdivisions of the state entering into contracts under this section may require liability and workers' compensation coverage to the maximum of their liability limits as a condition for entry into the contract and may also require that the contracting unit of government and its agents and employees be coinsured under the policies.~~

Sec. 17. COMMUNITY SERVICE. (a) If the court places a defendant on probation, the court may require, as a condition of the probation, that the defendant work a specified number of hours at a specified community service project for an

organization named in the court's order, and may also require that the defendant submit to testing for controlled substances.

(b) The amount of community service work ordered by the court:

(1) may not exceed 1,000 hours and may not be less than 320 hours for an offense classified as a first degree felony;

(2) may not exceed 800 hours and may not be less than 240 hours for an offense classified as a second degree felony;

(3) may not exceed 600 hours and may not be less than 160 hours for an offense classified as a third degree felony;

(4) may not exceed 200 hours and may not be less than 80 hours for an offense classified as a Class A misdemeanor or for any other misdemeanor for which the maximum permissible imprisonment, if any, exceeds six months or the maximum permissible fine, if any, exceeds \$1,000; and

(5) may not exceed 100 hours and may not be less than 24 hours for an offense classified as a Class B misdemeanor or for any other misdemeanor for which the maximum permissible imprisonment, if any, does not exceed six months and the maximum permissible fine, if any, does not exceed \$1,000.

Sec. 18 [6c]. RESTITUTION CENTERS. (a) If a judge places a defendant on probation under any provision of this article as an alternative to imprisonment and the probation department has prepared a risk assessment instrument or indicates to the court its intention to prepare an instrument to submit to the criminal justice assistance division within 30 days [in the Texas Department of Corrections], the judge may require as a condition of probation [in addition to the conditions imposed under Section 6 of this article,] that the defendant serve a term of not less than three months or more than 12 months in a restitution [community rehabilitation] center if:

(1) the district is served by a restitution center or contracts with a department that agrees to provide spaces in its restitution [community rehabilitation] center;

(2) the defendant is not sentenced for a felony offense under Title 5, Penal Code; and

(3) the trier of facts determines that the defendant did not cause the [bodily injury,] serious bodily injury[;] or death of another as a result of the commission of the offense or use a deadly weapon during the commission of or flight from the offense.

(b) If a jury recommends that an eligible defendant serve an alternate term in a restitution [community rehabilitation] center, the judge shall follow the jury's recommendation.

(c) A probationer granted probation under this section may not earn good conduct credit for time spent in a restitution [community rehabilitation] center or apply time spent in the center toward completion of a prison sentence [in the Texas Department of Corrections] if the probation is revoked.

(d) As directed by the judge [No later than three months after the date on which a defendant is granted probation under this section and at least once during every three months after that date that the probationer is in a community rehabilitation center], the restitution [rehabilitation] center director shall file with the chief adult probation officer or the probation department director a copy of an evaluation made by the director of the probationer's behavior and attitude at the center. The officer or director shall examine the evaluation, make written comments on the evaluation that he considers relevant, and file the evaluation and comments with the judge who granted probation to the probationer. If the evaluation indicates that the probationer has made significant progress toward compliance with court-ordered conditions of probation and payment of restitution, the court may release the probationer from the restitution [community rehabilitation] center. The

probationer shall serve the remainder of his probation under any terms and conditions the court imposes under this article. ~~[The court shall require the probation department to place the probationer under intensive supervision during the first two months after his release.]~~

(e) No later than nine months after the date on which a defendant is granted probation under this section, the restitution ~~[community rehabilitation]~~ center director shall file with the chief adult probation officer or the probation department director a copy of an evaluation made by the director of the probationer's behavior and attitude at the center. The officer or director shall examine the evaluation, make written comments on the evaluation that he considers relevant, and file the evaluation and comments with the judge who granted probation to the defendant. If the report indicates that the probationer has made significant progress toward court-ordered conditions of probation and payment of restitution, the court ~~may~~ ~~[shall]~~ modify its sentence and release the probationer in the same manner as provided by Subsection (d) of this section. If the report indicates that the probationer would benefit from continued participation in the restitution ~~[community rehabilitation]~~ center program, the court may order the probationer to remain at the restitution ~~[community rehabilitation]~~ center for a period determined by the court. If the report indicates that the probationer has not made significant progress toward rehabilitation, the court may revoke probation and order the prisoner to the term of imprisonment specified in the probationer's sentence.

(f) ~~If ordered by the judge who placed the defendant on probation, a restitution [A community rehabilitation] center director shall attempt to secure employment for the [each] probationer [required to serve a probationary term in a community rehabilitation center under this article].~~ The director shall also attempt to place a ~~[each] probationer as a worker in a community-service project of a type described by Section 17 [in Section 10A(g)] of this article, either during off-work hours if the probationer is employed or during any time if the probationer is unable to find employment, if so ordered by the judge that placed the defendant on probation.~~

(g) The employer of a probationer participating in a program under this section shall deliver the probationer's salary to the restitution ~~[community rehabilitation]~~ center director. The director shall deposit the salary into a fund to be given to the probationer on his release after deducting:

- (1) the cost to the center for the probationer's food, housing, and supervision;
- (2) necessary travel expense to and from work and community-service projects and other incidental expenses of the probationer;
- (3) support of the probationer's dependents; and
- (4) restitution to the victims of an offense committed by the probationer.

(h) If a restitution ~~[community rehabilitation]~~ center director is unable to find employment for a probationer, the director may transfer the probationer to the supervision of the director of another restitution ~~[community rehabilitation]~~ center who agrees to accept the probationer as a participant in the center's program.

(i) A restitution ~~[community rehabilitation]~~ center director may grant a short-term furlough to a probationer and may grant an emergency furlough to a probationer for the ~~documented purposes~~ ~~[purpose]~~ of obtaining medical treatment or diagnosis or ~~attending [to attend]~~ funerals or ~~visiting [visit]~~ critically ill relatives.

(j) A probationer participating in a program under this article shall be confined in the restitution ~~[community rehabilitation]~~ center at all times except for:

- (1) time spent at work and traveling to and from work;
- (2) time spent attending and traveling to and from an education or rehabilitation program approved by the restitution ~~[community rehabilitation]~~ center director or the court;

(3) time spent attending and traveling to and from a community-service project; and

(4) time spent on short-term or emergency furlough.

[(k) Before sentencing a defendant to an alternate probationary sentence under this section, the court shall consider whether the defendant is a proper subject for probation authorized under Section 3e of this article.]

Sec. 19. COMMUNITY CORRECTIONS FACILITIES OTHER THAN RESTITUTION CENTERS. (a) In this section, "community corrections facility" means a facility listed in Subdivision (1) of Section 5, Article 42.13, of this code, other than a restitution center.

(b) If a judge places a defendant on probation under any provision of this article as an alternative to imprisonment and the probation department has prepared a risk assessment instrument or indicates to the court its intention to prepare an instrument to submit to the criminal justice assistance division within 30 days, the judge may require as a condition of probation that the defendant serve a term of not less than one month or more than 24 months in a community corrections facility designated by the judge if:

(1) the district is served by such a community corrections facility or contracts with a department that agrees to provide spaces in its community corrections facility of that type; and

(2) the trier of facts determines that the defendant did not cause the serious bodily injury or death of another as a result of the commission of the offense or use a deadly weapon during the commission of or flight from the offense.

(b) If a jury recommends that an eligible defendant serve an alternate term in a community corrections facility, the judge shall follow the jury's recommendation.

(c) A probationer granted probation under this section may not earn good conduct credit for time spent in a community corrections facility or apply time spent in the facility toward completion of a prison sentence if the probation is revoked.

(d) As directed by the judge, the corrections facility director shall file with the chief adult probation officer or the probation department director a copy of an evaluation made by the director of the probationer's behavior and attitude at the facility. The officer or director shall examine the evaluation, make written comments on the evaluation that he considers relevant, and file the evaluation and comments with the judge who granted probation to the probationer. If the evaluation indicates that the probationer has made significant progress toward compliance with court-ordered conditions of probation, the court may release the probationer from the community corrections facility. The probationer shall serve the remainder of his probation under any terms and conditions the court imposes under this article.

(e) No later than 18 months after the date on which a defendant is granted probation under this section, the community corrections facility director shall file with the chief adult probation officer or the probation department director a copy of an evaluation made by the director of the probationer's behavior and attitude at the center. The officer or director shall examine the evaluation, make written comments on the evaluation that he considers relevant, and file the evaluation and comments with the judge who granted probation to the defendant. If the report indicates that the probationer has made significant progress toward court-ordered conditions of probation, the court shall modify its sentence and release the probationer in the same manner as provided by Subsection (d) of this section. If the report indicates that the probationer would benefit from continued participation in the community corrections facility program, the court may order the probationer to remain at the community corrections facility for a period determined by the court. If the report indicates that the probationer has not made significant progress

toward rehabilitation, the court may revoke probation and order the prisoner to the term of imprisonment specified in the probationer's sentence.

(f) If ordered by the judge who placed the defendant on probation, a community corrections facility director shall attempt to place a probationer as a worker in a community-service project of a type described by Section 17 of this article.

(g) A community corrections facility director has the same authority as a restitution center director has under Section 18(i) of this article.

(h) A probationer participating in a program under this article shall be confined in the community corrections facility at all times except for:

(1) time spent attending and traveling to and from an education or rehabilitation program as ordered by the court;

(2) time spent attending and traveling to and from a community-service project; and

(3) time spent away from the facility for purposes described by Section 18(i) of this article.

Sec. 20 [6f]. [(a)] If a judge determines that a defendant whom the judge would otherwise sentence to the Texas Department of Corrections would benefit from intensive or maximum probation [and the district is served by an intensive probation program described by Section 3.11, Article 42.121 of this code], the judge shall suspend imposition of the sentence and place the defendant on intensive or maximum probation.

[(b)] Except as otherwise provided by this subsection, a defendant may be placed on or removed from intensive probation only by order of the court. A court that places a defendant on intensive probation may authorize the probation officer supervising the probationer to modify the conditions of probation for the limited purpose of transferring the probationer to different programs within the intensive probation program.

[(c)] If a probation officer modifies the conditions of intensive probation, he shall deliver a copy of the modified conditions to the probationer and note the date of delivery of the copy in the probationer's file. If the probationer agrees to the modification in writing, the probation officer shall file a copy of the modified conditions with the district clerk and the conditions shall be enforced as modified. If the probationer does not agree to the modification in writing, the probation officer shall refer the case to the court for modification by the judge in the manner provided by Subsection (a) of Section 6 of this article.

[(d)] It is the intent of the legislature to provide courts with a continuum of programs and sanctions to employ in the supervision and rehabilitation of probationers. It is not the intent of the legislature that courts be more lenient with a defendant described by this section:

[Sec. 6f. (a) If a person convicted of an offense under Article 6701H-1, Revised Statutes, is punished under Subsection (c) of that article and is placed on probation, the court shall require, as a condition of the probation, that the defendant attend and successfully complete before the 181st day after the day probation is granted an educational program jointly approved by the Texas Commission on Alcohol and Drug Abuse, the Department of Public Safety, the Traffic Safety Section of the State Department of Highways and Public Transportation, and the Texas Adult Probation Commission designed to rehabilitate persons who have driven while intoxicated. The Texas Commission on Alcohol and Drug Abuse shall publish the jointly approved rules and shall monitor, coordinate, and provide training to persons providing the education programs. The Texas Commission on Alcohol and Drug Abuse is responsible for the administration of the certification of approved educational programs and may charge a nonrefundable application fee for the initial certification of approval and for renewal of a certificate. Persons who have

successfully completed an approved educational program or who are currently under an order to attend an educational program shall not be eligible for attendance upon a subsequent offense. The judge may waive the educational program requirement, however, if the defendant by a motion in writing shows good cause. In determining good cause, the judge may consider but is not limited to: the offender's school and work schedule, the offender's health, the distance which the offender must travel to attend an educational program, and the fact that the offender resides out of state, has no valid driver's license, or does not have access to transportation. The judge shall set out the finding of good cause in the judgment. If a person is required, as a condition of probation, to attend an educational program, the court clerk shall immediately report such fact to the Department of Public Safety, on a form prescribed by the department, for inclusion in the person's driving record. The report must include the beginning date of the person's probation. Upon the successful completion of the educational program, the person shall give notice to the probation department. The probation department shall then forward the notice to the court clerk. The court clerk shall then report the date of successful completion of the educational program to the Department of Public Safety for inclusion in the person's driving record. If the department does not receive notice that a person required to complete an educational program has successfully completed the program within the period required by this section, as shown on department records, the department shall suspend the person's driver's license, permit, or privilege or prohibit the person from obtaining a license or permit, as provided by Subdivision (2), Subsection (g), Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes).

[(b) If a person convicted of an offense under Article 67011-1, Revised Statutes, or Section 19.05(a)(2), Penal Code, is placed on probation, but only on conviction of a second or subsequent offense under this article or section, the court may require as a condition of probation that the defendant not operate a motor vehicle unless the vehicle is equipped with a device that uses a deep-lung breath analysis mechanism to make impractical the operation of the motor vehicle if ethyl alcohol is detected in the breath of the operator. The court shall require the defendant to obtain the device at his own cost. The Department of Public Safety shall approve devices for use under this subsection. The provisions of Section 23A(f), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), apply to the approval of a device under this subsection and the consequences of that approval. Notwithstanding the provisions of this section, if a person is required to operate a motor vehicle in the course and scope of the person's employment and if the vehicle is owned by the employer, the person may operate that vehicle without installation of an approved ignition interlock device if the employer has been notified of such driving privilege restriction and if proof of that notification is with the vehicle. This employment exemption does not apply, however, if the business entity that owns the vehicle is owned or controlled by the person whose driving privilege has been restricted.

[(b) The court may require or permit a person who was previously convicted of an offense under Article 67011-1, Revised Statutes, and who was required to attend an educational program under Subsection (a) of this section as a condition of probation, to attend an educational program under Subsection (a) of this section if the court determines that attendance at a program would be in the person's best interest.

[(c) Notwithstanding the provision of Section 24(g), Article 6687b, Vernon's Texas Civil Statutes, if the court, under Subsection (b) of this section, permits or requires a person to attend an educational program as a condition of probation, and the person has previously been convicted of an offense under Article 67011-1,

Revised Statutes, and has previously been required to attend such a program, the court shall automatically suspend the driver's license, permit, or operating privilege of such person for a period determined by the court according to the following schedule:

[~~(1) not less than 90 days or more than 365 days, if the person is punished under Subsection (c), Article 67011-1, Revised Statutes, whether or not the punishment is increased under Subsection (f) of that article; or~~

~~(2) not less than 180 days or more than 2 years, if the person is punished under Subsection (d) or (e), Article 67011-1, Revised Statutes, whether or not the punishment is increased under Subsection (f) of that article.~~

~~(d) If the Department of Public Safety receives notice that a person has been required or permitted to attend an educational program under Subsection (b) of this section, but the court has not ordered a period of suspension, the department shall suspend the person's driver's license, permit, or operating privilege, or shall issue an order prohibiting the person from obtaining a license or permit for a period of 365 days.]~~

Sec. 21 [6g]. ELECTRONIC MONITORING. (a) If a judge sentences a defendant to a term of confinement in county jail or imprisonment in the institutional division of the Texas Department of Criminal Justice [Corrections], the defendant is eligible for probation, and the district is served by a district probation office that has an electronic monitoring program approved by the community justice assistance division of the Texas Department of Criminal Justice [Adult Probation Commission], the judge may suspend imposition of the sentence of imprisonment or confinement and require as a condition of probation [in addition to the conditions imposed under Section 6 of this article;] that the defendant submit to electronic monitoring. The judge may also require the defendant to submit to testing for controlled substances.

~~(b) [If at any time after a probationer is placed on probation under this section the court determines the probationer has violated a condition of probation under this section or any other section of this article, the court may revoke probation and order the probationer to the term of imprisonment specified in the probationer's sentence.~~

~~(c)] The court may, on a determination that the probationer has made significant progress toward compliance with court-ordered conditions of probation, release the probationer from the electronic monitoring program. The probationer shall serve the remainder of his probation under any terms and conditions the court imposes under this article.~~

Sec. 22. FEES. (a) Except as otherwise provided by this subsection, a court granting probation shall fix a fee of not less than \$25 and not more than \$40 per month to be paid to the court by the probationer during the probationary period. The court may make payment of the fee a condition of granting or continuing the probation. The court may waive or reduce the fee or suspend a monthly payment of the fee if it determines that payment of the fee would cause the probationer a significant financial hardship.

(b) The court shall deposit the fees received under Subsection (a) of this section in the special fund of the county treasury, to be used for the same purposes for which state aid may be used under Article 42.131 of this code.

(c) A court receiving a probationer for supervision as authorized by Article 42.11 of this code may impose on the probationer any term of probation authorized by this article and may require the probationer to pay the fee authorized by Subsection (a) of this section. Fees received under this section shall be deposited in the same manner as required by Subsection (b) of this section.

(d) For the purpose of determining when fees due on conviction are to be paid to any officer or officers, the placing of the defendant on probation shall be

considered a final disposition of the case, without the necessity of waiting for the termination of the period of probation or suspension of sentence.

Sec. 23 [7]. REDUCTION OR TERMINATION OF PROBATION. At any time, after the defendant has satisfactorily completed one-third of the original probationary period or two years of probation, whichever is the lesser, the period of probation may be reduced or terminated by the court. Upon the satisfactory fulfillment of the conditions of probation, and the expiration of the period of probation, the court, by order duly entered, shall amend or modify the original sentence imposed, if necessary, to conform to the probation period and shall discharge the defendant. In case the defendant has been convicted or has entered a plea of guilty or a plea of nolo contendere to an offense other than an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 67011-1, Revised Statutes, and the court has discharged the defendant hereunder, such court may set aside the verdict or permit the defendant to withdraw his plea, and shall dismiss the accusation, complaint, information or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted or to which he has pleaded guilty, except that proof of his said conviction or plea of guilty shall be made known to the court should the defendant again be convicted of any criminal offense.

Sec. 24 [8]. VIOLATION OF PROBATION: DETENTION AND HEARING. (a) At any time during the period of probation the court may issue a warrant for violation of any of the conditions of the probation and cause the defendant to be arrested. Any probation officer, police officer or other officer with power of arrest may arrest such defendant without a warrant upon the order of the judge of such court to be noted on the docket of the court. A probationer so arrested may be detained in the county jail or other appropriate place of detention until he can be taken before the court. Such officer shall forthwith report such arrest and detention to such court. If the defendant has not been released on bail, on motion by the defendant the court shall cause the defendant to be brought before it for a hearing within 20 days of filing of said motion, and after a hearing without a jury, may either continue, extend, modify, or revoke the probation. ~~[If the court decides to continue or modify the probation of a felony defendant after determining that the defendant violated administrative provisions of probation or committed a misdemeanor offense while on probation, the court may order that the defendant be confined in the county jail for a period not to exceed 30 days.]~~ In a felony case, the state may amend the motion to revoke probation any time up to seven days before the date of the revocation hearing, after which time the motion may not be amended except for good cause shown, and in no event may the state amend the motion after the commencement of taking evidence at the hearing. The court may continue the hearing for good cause shown by either the defendant or the state.

(b) In a probation revocation hearing at which it is alleged only that the probationer violated the conditions of probation by failing to pay compensation paid to appointed counsel, probation fees, court costs, restitution, or reparations, the inability of the probationer to pay as ordered by the court is an affirmative defense to revocation, which the probationer must prove by a preponderance of evidence.

(c) A defendant has a right to counsel at a hearing under this section.

Sec. 25. CONTINUATION OR MODIFICATION. (a) If after a hearing under Section 24 of this article a court continues or modifies a felony probation after determining that the probationer violated a condition of probation, the court shall impose one or more of the following sanctions on the probationer:

(1) a requirement that the probationer perform work probation or community service for a number of hours specified by the court under Section 16

or 17 of this article, or an increase in the number of hours that the probationer has previously been required to perform under those sections;

(2) an increase in the period of probation, in the manner described by Subsection (b) of this section;

(3) an increase in the probationer's fine, in the manner described by Subsection (c) of this section;

(4) the placement of the probationer in an intensive or maximum probation program, in the same manner and under the same conditions as if the court had originally placed the probationer in that program;

(5) the placement of the probationer in an electronic monitoring program under Section 21 of this article;

(6) confinement in the county jail for a period not to exceed 30 days, to be served consecutively, or at the discretion of the court, in the manner provided by Article 42.033 or 42.034 of this code;

(7) placement in a community corrections facility, in the same manner and under the same conditions as if the court had originally placed the probationer in that program, if the probationer would have been eligible for sentencing to the center on conviction of the offense for which the probationer received probation; or

(8) confinement in the county jail for a period not to exceed 90 days, to be served consecutively.

(b) A court may impose a sanction on a probationer described by Subsection (a)(2) of this section by extending the period of probation for a period not to exceed one year. The total period of probation, including any extensions under this subsection, may not exceed 10 years.

(c) A court may impose a sanction on a probationer described by Subsection (a)(3) of this section by increasing the fine imposed on the defendant. The original fine imposed on the probationer and an increase in the fine imposed under this subsection may not exceed the maximum fine for the offense for which the probationer was sentenced. The court shall deposit money received from an increase in the probationer's fine under this subsection in the special fund of the county treasury to be used for the same purposes for which state aid may be used under Article 42.131 of this code.

(d) If a court continues or modifies a misdemeanor probation after determining that the probationer violated a condition of probation, the court may extend the probationer's period of probation or increase the probationer's fine, in the same manner under Subsections (b) and (c) of this section as if the probationer were a felony probationer, except that the total period of probation, including any extensions imposed under this subsection, may not exceed three years.

Sec. 26. REVOCATION. (a) If probation is revoked after a hearing under Section 24 of this article, the court may proceed to dispose of the case as if there had been no probation, or if it determines that the best interests of society and the probationer would be served by a shorter term of imprisonment, reduce the term of imprisonment originally assessed to any term of imprisonment not less than the minimum prescribed for the offense of which the probationer was convicted. The court shall enter the amount of restitution or reparation owed by the defendant on the date of revocation in the judgment in the case. [Instead of revoking probation in a felony case, the court may order a probationer to serve a term in a community rehabilitation center if the probationer would have been eligible for sentencing to the center on conviction of the offense for which the probationer received probation.]

(b) [Any probationer who removes himself from the State of Texas without permission of the court having jurisdiction of the case, shall be deemed and considered a fugitive from justice and shall be subject to extradition as now provided

by law.] No part of the time that the defendant is on probation shall be considered as any part of the time that he shall be sentenced to serve, except for time spent by the defendant in actual confinement as a condition of probation under Section 12 or 13 of this article. The right of the probationer to appeal to the Court of Appeals for a review of the trial and conviction, as provided by law, shall be accorded the probationer at the time he is placed on probation. When he is notified that his probation is revoked for violation of the conditions of probation and he is called on to serve a sentence in a jail or in an institution operated by the Department of Corrections, he may appeal the revocation.

~~[(c) In a probation revocation hearing at which it is alleged only that the probationer violated the conditions of probation by failing to pay compensation paid to appointed counsel, probation fees, court costs, restitution, or reparations; the inability of the probationer to pay as ordered by the court is an affirmative defense to revocation, which the probationer must prove by a preponderance of evidence.~~

~~[(d) Notwithstanding the provisions of Sections 3 and 3a of this article, if the court, after a hearing on a motion to revoke probation, finds that the defendant has violated one or more of the conditions of probation other than the commission of a felony offense, the court may punish the defendant by extending the period of probation instead of revoking probation. Probation may be extended under this subsection for a period not to exceed one year for a felony probation and a period not to exceed 180 days for a misdemeanor probation. The total period of probation, including any extensions imposed under this subsection, may not exceed 10 years for a felony offense or two years for a misdemeanor offense. Instead of punishing a defendant by extending a period of probation under this subsection, the court may punish the defendant by increasing the fine imposed on the defendant. The original fine imposed on the defendant and an increase in the fine imposed under this subsection may not exceed the maximum fine for the offense for which the defendant was sentenced. The court shall deposit money received from an increase in a defendant's fine under this subsection in the special fund of the county treasury provided by Subsection (b), Section 4.05, Article 42-121, of this code, to be used for the same purposes for which state aid may be used under that section.]~~

Sec. 27 [9]. CHANGE OF RESIDENCE; LEAVING THE STATE. (a) If, for good and sufficient reasons, a probationer desires [probationers desire] to change his [their] residence within the State, such transfer may be effected by application to the [their] supervising probation officer, which transfer shall be subject to the court's consent and subject to such regulations as the court may require in the absence of a probation officer in the locality to which the probationer is transferred.

(b) Any probationer who removes himself from the State of Texas without permission of the court having jurisdiction of the case shall be considered a fugitive from justice and shall be subject to extradition as now provided by law.

[Sec. 10. (a) For the purpose of providing adequate probation services, the district judge or district judges trying criminal cases in each judicial district in the state shall establish a probation office and employ, in accordance with standards set by the commission, district personnel as may be necessary to conduct presentence investigations, supervise and rehabilitate probationers, and enforce the terms and conditions of misdemeanor and felony probation. The district judge or judges may authorize district personnel to operate programs for the supervision and rehabilitation of persons in pretrial diversion programs. Persons in pretrial diversion programs may be supervised for a period not to exceed 12 months and may be assessed a supervisory fee or a program fee, or both, provided the maximum fees do not exceed a total of \$200.00. If two or more judicial districts serve a county, or a district has more than one county, one district probation department shall serve all courts and counties in the districts. However, the adult probation commission

may adopt rules to allow more than one probation department in a judicial district with more than one county if providing more than one probation department will promote administrative convenience or economy or improve probation services. The district judge or judges may direct the probation department to establish and maintain a community rehabilitation center under this subsection. The district judge or judges may enter into an agreement with the judge or judges of other districts for the purpose of establishing a regional community rehabilitation center. If a community rehabilitation center is established, the district judge or judges shall appoint a community advisory council to advise the probation department in its establishment and maintenance of the center.

~~[(b) Where more than one probation officer is required, the judge or judges shall appoint a chief adult probation officer or director, who, with their approval, shall appoint a sufficient number of assistants and other employees to carry on the professional, clerical, and other work of the court. The chief adult probation officer or director shall also appoint the director of a community rehabilitation center established in the district. The appointment is subject to the approval of the district judge or judges.~~

~~[(c) To be eligible for appointment as an adult probation officer, a person who is not an adult probation officer on the effective date of this Act:~~

~~[(1) must have acquired a bachelor's degree conferred by a college or university accredited by an accrediting organization recognized by the Coordinating Board, Texas College and University System; and~~

~~[(A) one year of graduate study in criminology, corrections, counseling, law, social work, psychology, sociology, or a related field that has been approved by the Texas Adult Probation Commission; or~~

~~[(B) one year of experience in full-time case work, counseling, or community or group work in a social, community, corrections, or juvenile agency that deals with offenders or disadvantaged persons that has been approved by the Texas Adult Probation Commission; and~~

~~[(2) must not be otherwise disqualified by Section 24 of Article 42.18 of this code.~~

~~[(d) The adult probation commission may adopt rules under which a judicial district may employ an adult probation officer who is not qualified under Subdivision (B), Subsection (c) of this section if the district judge, district judges, chief adult probation officer, or director tried but failed to employ a probation officer qualified under Subsection (c) of this section. The adult probation commission shall adopt standards to ensure that when a judicial district appoints a chief adult probation officer or director, the person appointed shall be the most qualified applicant for the position. Each judicial district shall make a good faith effort to comply with standards adopted under this subsection.~~

~~[(e) The same person serving as a probation officer for juveniles may not be required to serve as a probation officer for adults and vice versa.~~

~~[(f) Probation officers shall be furnished transportation or, alternatively, shall be entitled to an automobile allowance for use of personal automobile on official business.~~

~~[(g) Except as provided in Subsection (k) of this section, personnel of the respective district probation departments shall not be deemed state employees and the responsible judge or judges of a district probation department shall negotiate a contract with the most populous county within the judicial district for all district probation department staff to participate in that county's group insurance programs, retirement plan, including the district and county retirement system if the county participates in that system for any county employees, and personnel policies with regard to vacation credit, sick leave credit, holiday schedule, credit union, jury leave, military leave, etc.~~

~~[(h) Where a judicial district has criminal jurisdiction in two or more counties, those counties may enter into agreement that the total expenses of such facilities, equipment, and utilities be distributed approximately in the same proportion as the population in each county bears to the total population of all those counties, according to the last preceding or any future federal census.~~

~~[(i) The salaries of personnel, and other expenses essential to the adequate supervision of probationers, shall be paid from the funds of the judicial district. In all the instances of employment of probation officers, the responsible judges are authorized to accept state aid, grants or gifts from other political subdivisions of the state or associations and foundations, for the sole purpose of financing adequate and effective probationary programs and community-based correctional facilities other than jails or prisons in the various parts of the district. For the purposes of this Act, the municipalities of this state are specifically authorized to grant and allocate such sums of money as their respective governing bodies may approve to their appropriate county governments for the support and maintenance of effective programs. All grants, gifts, and allocations of the character and purpose described in this section shall be handled and accounted for separately from other public funds of the county.~~

~~[(j) In a county with a population in excess of 1,000,000 according to the most recent federal census, both the district judges trying criminal cases and the judges of statutory county courts trying criminal cases are entitled to participate in the supervision and administration of the probation office serving those courts.~~

~~[(j-1) The judges of the County Courts Nos. 1 and 2 of Galveston County shall participate in the management of the probation department serving the county and for that purpose have the same duties and powers imposed by that section as do the district judges trying criminal cases in the county.~~

~~[(j-2) The judge of a county court at law in Webb County shall participate in the management of the probation department serving the county and for that purpose has the same duties and powers as do the district judges trying criminal cases in the county.~~

~~[(k) Persons employed as district personnel under Subsection (a) of this section are state employees for the purposes of Chapter 309, Acts of the 64th Legislature, 1975 (Article 6252-26, Vernon's Texas Civil Statutes), and Article 8309g, Revised Statutes.~~

~~[(l) The county or counties comprising a judicial district or geographical area served by a district probation department shall provide physical facilities, equipment, and utilities for an effective and professional adult probation and adult community-based correctional service. The Texas Adult Probation Commission shall monitor the support a county provides under this subsection and determine whether the support meets standards for minimum support established by the commission. If the commission determines that a county's support is not sufficient, the commission may impose a sanction authorized by Section 4.06 of Article 42.121 of this code.~~

~~[(m) The district judge or judges may authorize the expenditure of district funds in order to provide expanded facilities, equipment, and utilities if:~~

~~[(1) the probation department needs to increase its number of employees in order to provide more effective service;~~

~~[(2) the county or counties certify to the judge or judges that they have neither adequate space in county-owned buildings nor adequate funds to lease additional physical facilities, purchase additional equipment, and pay for additional utilities required by the department; and~~

~~[(3) the county or counties provide facilities, equipment, and utilities at or above the level required by the Texas Adult Probation Commission.~~

~~[(n) The Texas Adult Probation Commission shall set as the level of contribution a county or counties must meet or exceed to receive district funds under Subsection (m) of this section a level that is not lower than the average level provided by the county or counties during the county fiscal years of 1979, 1980, 1981, 1982, and 1983. In setting the level, the commission may consider inflation and changes in the population and tax base in the county or counties.~~

~~[(o) If the probation department needs to expand its facilities in order to provide more effective services and if the judge or judges determine that effective management of the department requires all or part of the department to be moved to rented or leased space outside of the county-owned building because additional space in a county-owned building is unavailable, the county or counties shall provide the department with funds necessary to pay for the rental or lease of the same number of square feet as provided to the department in county-owned buildings immediately before such a move. The district judge or judges may approve a proportional reduction in a county's contribution to the cost of rental or lease of space provided to a probation department if the judge or judges determine that the number of probationers supervised by the department has decreased and the department is able to provide effective services with a reduced number of officers requiring less office space.~~

~~[(p) The district judge or judges may authorize expenditures of funds provided by the Texas Adult Probation Commission to the department for the purposes of providing facilities, equipment, and utilities for community-based correctional programs if:~~

~~[(1) the judge or judges direct the probation department to establish community-based correctional programs requiring facilities other than a probation office;~~

~~[(2) the adult probation commission provides state funds for the purpose of establishing or improving community rehabilitation centers and other community-based correctional programs other than jails or prisons; and~~

~~[(3) the county or counties certify to the judge or judges that space in county-owned buildings is not available and county funds are not available to provide facilities, equipment, and utilities for the establishment of community-based correctional programs.~~

~~[(q) Judicial districts are authorized to contract with the Board of Pardons and Paroles for the supervision of persons on probation by a parole officer, provided that the contracts provide the districts with cost savings. Judicial districts entering into contracts under this subsection shall report annually payments to the commission; and the commission shall forward the reports to the governor and the legislature.~~

~~[(r) Where an even number of judges are required by Subsection (a) of this section to establish and maintain a district probation office, if the judges are unable to agree on the establishment or maintenance of the office, any of the judges may request that the presiding judge of the administrative judicial district in which the judges serve appoint a special master to aid in the administration of the office. The special master must be a district judge who is experienced in hearing criminal cases. If the judges are unable to agree on a decision required by this section, an agreement on the decision by half of the judges and the special master is sufficient to bind the judicial district. A special master appointed under this subsection is not entitled to compensation but is entitled to reimbursement from the probation office for actual and necessary expenses incurred in performing official duties as a special master.~~

~~[Sec. 10A. (a) Except for a defendant charged with an offense under Article 67011-1, Revised Statutes, as amended, a defendant who pleads guilty or nolo contendere to a first offense that does not involve bodily injury or the threat of bodily injury to any person and for which the maximum punishment assessed against the defendant does not exceed 10 years' imprisonment is eligible for community-service restitution probation.~~

~~[(b) The judges of the courts of the State of Texas having original jurisdiction of criminal actions, when it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public as well as the defendant will be subserved thereby, shall have the power, upon application of an eligible defendant and after receiving the defendant's plea, hearing the evidence, and finding that it substantiates the defendant's guilt, to defer further proceedings without entering an adjudication of guilt and place the defendant on community-service restitution probation:~~

~~[(c) If the court places a defendant on community-service restitution probation, the court shall require, as a condition of the probation, that the defendant work a specified number of hours at a specified community-service project for an organization named in the court's order:~~

~~[(d) The amount of community-service work ordered by the court:~~

~~[(1) may not exceed 1,000 hours and may not be less than 320 hours for an offense classified as a first degree felony;~~

~~[(2) may not exceed 800 hours and may not be less than 240 hours for an offense classified as a second degree felony;~~

~~[(3) may not exceed 600 hours and may not be less than 160 hours for an offense classified as a third degree felony;~~

~~[(4) may not exceed 200 hours and may not be less than 80 hours for an offense classified as a Class A misdemeanor or for any other misdemeanor for which the maximum permissible imprisonment, if any, exceeds six months or the maximum permissible fine, if any, exceeds \$1,000; and~~

~~[(5) may not exceed 100 hours and may not be less than 24 hours for an offense classified as a Class B misdemeanor or for any other misdemeanor for which the maximum permissible imprisonment, if any, does not exceed six months and the maximum permissible fine, if any, does not exceed \$1,000:~~

~~[(e) The terms of community-service restitution probation shall include the condition that the defendant shall:~~

~~[(1) work faithfully at the community-service task assigned by the court; and~~

~~[(2) make restitution and/or reparation to the victim of the offense and any other person who suffered loss of property or physical injury as a result of the offense as ordered by the court; and shall include, but shall not be limited to, the conditions set forth in Sections 6 and 6a of this article:~~

~~[(f) The clerk of a court granting community-service restitution probation shall promptly furnish the probationer with a written statement of the period and terms of the probation:~~

~~[(g) Community-service work authorized pursuant to this section must be for any nonprofit organization that has agreed to accept community-service probationers and supervise and report on their work and whose services are provided to the general public and are designed to enhance the social welfare, physical or mental stability, environmental quality, or general well-being of the community:~~

~~[(h) The court shall select community-service tasks that may be performed during hours the probationer is not working or attending school and that are within the probationer's capabilities. A probationer may not receive compensation for community-service work:~~

~~[(i) On violation of a condition of community-service probation, the defendant may be arrested and detained as provided in Section 8 of this article. The defendant is entitled to a hearing limited to the determination by the court of whether it proceeds with an adjudication of guilt on the original charge. No appeal may be taken from this determination. After an adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, granting of~~

probation, and defendant's appeal continue as if the adjudication of guilt had not been deferred:

~~(j) Except as provided in Subsection (k) of this section on satisfactory completion by a probationer of the required amount of community-service restitution work and full payment of restitution as ordered by the court, if the court has not proceeded to adjudication of guilt, the court shall dismiss the proceedings against the defendant and discharge him. A dismissal and discharge under this section may not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense, except that on conviction of a subsequent offense the fact that the defendant previously received community-service probation is admissible on the issue of penalty.~~

~~(k) The provisions of Subsection (j) of this section do not apply to a defendant charged with an offense listed in Section 4.012(b), Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes). On satisfactory completion of probation by a defendant charged with such an offense, the court shall adjudge the defendant guilty of the offense and shall discharge him without further punishment.~~

~~[Sec. 11. For the purpose of determining when fees are to be paid to any officer or officers, the placing of the defendant on probation shall be considered a final disposition of the case, without the necessity of waiting for the termination of the period of probation or suspension of sentence.]~~

SECTION 4.18. Subsection (c), Section 3, Article 6181-1, Revised Statutes, is amended to read as follows:

~~(c) When a [A sheriff who has custody of a] prisoner imprisoned in a county jail [after conviction of an offense punishable by imprisonment in the department shall keep a record of the prisoner's behavior in jail. If the prisoner] is transferred to the department, the director shall [review the prisoner's jail record and may] award good conduct time to the prisoner up to an amount equal to that which the prisoner could have accrued during the [such] period of imprisonment in county jail, if the prisoner had been incarcerated in the department during that period.~~

SECTION 4.19. Chapter 493, Acts of the 61st Legislature, Regular Session, 1969 (Article 6166x-3, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. EMPLOYMENT OF INMATES [PRISONERS] OUTSIDE THE STATE PRISON SYSTEM; DEFINITIONS. (a) The Board of Pardons and Paroles [Texas Department of Corrections] is hereby authorized to grant work furlough privileges, under the "Work Furlough Plan," as hereinafter provided, which shall [may] include programs and procedures for eligible inmates in the Texas Department of Corrections to contribute to court-ordered restitution, support for the inmate's family and dependents, savings for the inmate's release, and the expenses of the inmate's room, board, and maintenance [or reparation to victims of the prisoner's crime, as established by the judgment of the court that sentenced the prisoner to his term of imprisonment, to any inmate of the state prison system serving a term of imprisonment], under such rules, regulations, and conditions as provided by this Act [the department of corrections may prescribe].

(b) In this Act:

(1) "Board" means the Board of Pardons and Paroles.

(2) "Department" means the Texas Department of Corrections.

Sec. 1A. [TEXAS] WORK FURLOUGH FACILITIES [PROGRAM ADVISORY BOARD]. (a) In order to accept inmates transferred by the board under this Act, a facility must be a secure correctional facility constructed by or under the authorization of a municipality or county, must be subject to timely certification by the American Correctional Association as a Community Residential Facility, must include on-site industry programs, and must allow for full-time

participation in training and employment programs by each inmate. A work furlough facility under this subsection shall comply with the requirements or constraints established under Subsection (b) of this section.

(b) The work furlough facility must be owned by a municipality or county and be operated under a contract between the Texas Board of Criminal Justice and the municipality or county in which the facility is located. The contract must provide for the detention, employment, education, and rehabilitation of inmates in accordance with the rules adopted by the board. The contract must contain the following provisions and requirements:

(1) an acknowledgment that payment by the state is subject to the availability of appropriations;

(2) a provision for payment of a maximum amount per biennium;

(3) a covenant that the work furlough facility and all its associated programs and services, including costs of construction, acquisition, or adaptation of the facility, be provided at a savings of not less than 10 percent of the inmate-per-day operational cost to the state for the department's general population category, as calculated by the Criminal Justice Policy Council in its most current Texas correctional costs analysis, excluding cost of facility construction, acquisition, or adaptation;

(4) a provision permitting the state to terminate the contract for cause, including as cause the failure to meet the conditions required by this Act and other conditions that may be set forth in the contract;

(5) a provision providing for cost adjustments only once in each biennium, to take effect at the beginning of the next biennium;

(6) a contract term of not more than three years, with an option to renew for additional periods of two years;

(7) a provision for an adequate plan of insurance to protect the state against all claims, including civil rights violations, arising from the services performed under the contract by the contracting party, to protect the state from actions by a third party against the contracting party or subcontractor of the contracting party, and to protect the state from actions by officers, guards, employees, or agents of the contracting party or its subcontractor;

(8) a provision adopting, to the extent allowable under applicable law, a plan for the purchase and assumption of operations by the state in the event of the inability of the contracting party to perform its duties under the contract; and

(9) a provision establishing comprehensive standards for conditions of confinement.

(c) A work furlough facility may not hold more than an average daily population of 500 inmates.

(d) A municipality or county that has a contract with the board to own and operate a work furlough facility may subcontract with one or more private vendors to construct, operate, or manage the facility and provide for the detention, employment, education, and rehabilitation services under the contract with the board. A subcontractor must demonstrate to the satisfaction of the municipality or county that it possesses the necessary management personnel and expertise to carry out the obligations of a subcontract with the municipality or county in accordance with applicable standards of the American Correctional Association.

(e) A work furlough facility is subject to regular, on-site monitoring by the board.

(f) Before the execution of a contract with the board, the governing body of the municipality or county must receive the written approval of the chief of police of the municipality or the sheriff of the county as to the provision of work furlough facilities in that law enforcement jurisdiction.

(g) A subcontract entered by the municipality or county with any private vendor for the provision of all or any part of the work furlough facility, including its acquisition, adaptation, or construction and its detention, employment, education, and rehabilitation programs, must contain an express statement that the subcontractor is subject to the same standards and requirements imposed by the contract on the municipality or county.

(h) A municipality or county that owns a work furlough facility, and subcontractors of the municipality or county are expressly prohibited from calculating inmate release and parole eligibility dates, awarding good conduct time, approving inmates for work, medical, or temporary furloughs from the facility or for preparole transfers, and classifying inmates for or placing inmates in less restrictive custody than the custody ordered by the board.

(i) A work furlough facility operated within the requirements and constraints established by this section may be acquired, adapted, or constructed by a municipality or county with the proceeds of certificates of obligation of the municipality or county issued in the manner prescribed by Subchapter C, Chapter 271, Local Government Code (Certificate of Obligation Act of 1971).

(j) All or part of the revenues received by a municipality or county from the board under a contract authorized by this section may be pledged by the municipality or county to secure or pay certificates of obligation, and the certificates of obligation shall be made payable solely from and secured solely by those revenues. [The Texas Work Furlough Program Advisory Board is hereby created: Its main office is in Huntsville, Texas, at the location of the office of the director of the Texas Department of Corrections.

[b] The board is composed of nine members appointed by the governor with the advice and consent of the senate. Except for the initial appointees, the members of the board hold office for terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year. In making the initial appointments, the governor shall designate three for terms expiring January 31, 1979, three for terms expiring January 31, 1981, and three for terms expiring January 31, 1983. The governor shall make the appointments in such a manner that the term of one member representing a recognized labor union, as required by Subsection (d) of this section, expires every two years.

[c] To be qualified for appointment as a member of the board, a person must be a citizen of the United States and a resident of Texas.

[d] Not less than three members of the board shall be representatives of recognized labor unions. The balance of the board membership shall be broadly representative of the noncorrectional general public and should include representatives of such groups as, for example, employer groups, local bar associations, citizen organizations, educators, social work professionals, and various entities in the criminal justice system, such as law enforcement agencies and probation and parole departments.

[e] Members of the board qualify by taking the constitutional oath of office before an officer authorized to administer oaths in this state. When a board member presents his oath of office and the certificate of his appointment to the secretary of state, the secretary of state shall issue a commission to him. The commission from the secretary of state is evidence of authority to act as a member of the board.

[f] The board shall formally elect a chairman and a secretary-treasurer from its members. The board may adopt rules necessary for the orderly conduct of its business.

[g] Five members of the board shall constitute a quorum for the transaction of business and may act for the board. The board shall prepare and preserve minutes and other records of its proceedings and actions.

[h] Members of the board do not receive a salary for their services but each member is entitled to \$25 for each day spent in attending meetings of the board;

including time spent in travel to and from the meetings, not to exceed \$500 a year. Members of the board are also entitled to be reimbursed for travel and other necessary expenses incurred while performing their official duties if the expenses are evidenced by voucher approved by the chairman or the secretary-treasurer of the board.

(ii) It shall be the functions of the board to advise the department of corrections in its administration of the Work Furlough Program and to provide a forum for the hearing and resolution of grievances against the program. In the fulfillment of its grievance resolution functions, the board shall have immediate access to all records maintained by the department in its administration of the Work Furlough Program and may request further pertinent information from the department not found in those records.

(j) The board shall prepare an annual report to be filed not later than 60 days following the close of each fiscal year with the governor, the lieutenant governor, members of the legislature, and the legislative budget board showing the activities of the board, together with such recommendations regarding the Work Furlough Program as deemed advisable.]

Sec. 2. ESTABLISHMENT OF WORK FURLOUGH PLAN. The board [department of corrections] is authorized and directed to establish a "Work Furlough Plan" under which an eligible inmate [prisoner] may be transferred [released] from a unit of [actual] confinement in the department [while remaining in technical custody, during the time required to proceed] to a work furlough facility where the inmate will remain in the technical custody of the board [the place of business of such prisoner's employer, perform the duties required and return to quarters designated by the department of corrections]. Inmates [Prisoners] shall be granted work furlough privileges by the board [director of the department of corrections] pursuant to the rules and regulations promulgated by the board [department of corrections]. [If the prisoner furloughed hereunder shall violate any of the conditions prescribed by the director, pursuant to the rules and regulations adopted by the department of corrections for the administration of the work furlough plan, or who shall willfully abscond while so employed, then such prisoner shall be transferred to the general prison population and be governed by the rules and regulations pertaining thereto. The rules and regulations promulgated for the administration of the work furlough plan shall be established and promulgated in the same manner as are other rules and regulations for the government and operation of the department of corrections.]

Sec. 3. QUARTERING OF INMATES [PRISONERS]. (a) The board [department of corrections] shall, as the need becomes evident, designate [and adapt] facilities [in the State Prison System, or] in the area of such inmate's [prisoner's] employment, for quartering inmates [prisoners] with work furlough privileges. No inmate [prisoner] shall be granted work furlough privileges until suitable facilities for quartering such inmate [prisoner] have been provided in the area where the inmate [prisoner] has obtained employment or has an offer of employment, or in a designated work furlough facility that combines employment facilities and living quarters for the inmate and is located within 100 miles of that inmate's recorded place of residence.

(b)(1) The director of the department [of corrections] may recommend to the board for transfer to a work furlough facility any appropriate inmate whose initial parole eligibility date is more than one year but less than two years from the projected date of transfer to a work furlough facility [prisoner who is statutorily eligible for parole, provided that the prisoner is either incarcerated for a nonviolent crime or at least 40 years old and incarcerated for an offense other than use of a deadly weapon or sex offense, to the Board of Pardons and Paroles for release on conditional work furlough parole to a halfway house under contract with the Board

~~of Pardons and Paroles for conditional work furlough parolees~~] when in the director's determination the inmate [prisoner] has a high probability of successful completion of ~~[release to]~~ conditional work furlough [parole].

(2) The board ~~[Board of Pardons and Paroles]~~, after receipt of the recommendation of release to conditional work furlough [parole], shall consider all pertinent information regarding the inmate [prisoner], including the circumstances of his offense, his previous social history and criminal record, his conduct, employment and attitude in prison, and his physical and mental health before recommending his transfer ~~[release]~~ to conditional work furlough in a work furlough facility [parole]. ~~[Upon the governor's approval, the prisoner shall be released to conditional work furlough parole.]~~

(3) An inmate transferred ~~[A prisoner released]~~ to conditional work furlough [parole] shall remain in the legal custody of the board ~~[department of corrections but]~~ and shall be amenable to the rules of the work furlough facility and the orders of the board ~~[Board of Pardons and Paroles. If a prisoner shall abscond while released to conditional work furlough parole, the prisoner shall be an escapee under the Penal Code].~~

(4) The board shall adopt rules for the conduct of inmates transferred under this Act. ~~[If a prisoner released to conditional work furlough parole violates any of the rules promulgated by the Board of Pardons and Paroles under this subsection, the conditional work furlough parole shall be subject to revocation procedures as provided in Article 42.12, Code of Criminal Procedure.]~~

(5) The rules adopted by the board under this Act ~~[Board of Pardons and Paroles]~~ shall include ~~[promulgate the necessary rules including]~~ a conditional work furlough inmate [parole] contract which shall include:

(A) an agreement by the inmate [prisoner] to contribute to the owner, operator, or manager of the work furlough facility, from the funds received by the inmate for the inmate's participation in on-site industries' training and employment, not more than 80 percent of the funds, to be used or distributed by the owner, operator, or manager of the work furlough facility to pay all or a part of ~~[pay for the costs of supervision, costs of being quartered in the halfway house,]~~ restitution to the victim or victims, savings, to be retained for the inmate in a designated account for the inmate's benefit and receipt on release, and support of the inmate's ~~[prisoners']~~ dependents, if any, with the remainder of the funds to be placed in an escrow account by the owner, operator, or manager, to the benefit of the general revenue fund with the owner, operator, or manager as trustee, to be spent as directed by appropriation; ~~[to implement the provisions of this subsection.]~~

(B) an agreement by the inmate to serve at least one calendar year in the work furlough facility before requesting parole review under Section 8(b), Article 42.18, Code of Criminal Procedure, and to serve at least one calendar year regardless of whether the inmate becomes eligible for mandatory supervision under Section 8(c), Article 42.18, Code of Criminal Procedure, during that calendar year; and

(C) an agreement by the inmate to participate in the employment, education, and rehabilitation programs available at the work furlough facility, to the extent that participation is recommended by the professional staff of the facility.

Sec. 4. ON-SITE ~~[SECURING]~~ EMPLOYMENT. The on-site ~~[The director of the department of corrections shall endeavor to secure]~~ employment for ~~[unemployed]~~ eligible inmates ~~[prisoners]~~ under this Act shall be~~;~~ subject to the following:

(1) such employment must be performed within the physical confines of the facility and must be at a wage at least as high as the prevailing wage for similar

work in the area or community where the work is performed and in accordance with the prevailing working conditions in such area, unless federal law requires a higher wage, in which event the wage required by federal law controls;

(2) such employment shall not result in the displacement of employed workers [or be in occupations, skills, crafts, or trades in which there is a surplus of available and qualified workers] in the locality[;] of the work furlough facility [the existence of such surplus to be determined by the Texas Employment Commission];

(3) inmates [prisoners] eligible for work furlough privileges shall not be employed as strikebreakers or in impairing any existing contracts;

(4) exploitation of eligible prisoners, in any form, is prohibited either as it might affect the community or the inmate or the department of corrections[;

](5) in the event a work furlough employer desires to reduce its labor force, it must release its work furlough inmate employees prior to releasing any of its free employees;

[(6) not more than 10 percent of a work furlough employer's labor force shall be composed of work furlough inmates unless prior special emergency approval for temporarily exceeding that percentage be secured from the Texas Work Furlough Program Advisory Board;

[(7) in the event a work furlough employer provides its employees with paid vacation leave which, due to their incarceration, work furlough inmates are unable to enjoy, said employer must either hold accrued vacation time for the inmate to take after discharge from the department of corrections or, at the election of the inmate, the employer must pay the inmate regular wages for the accrued vacation time;

[(8) in the event a National Labor Relations Board certification or decertification election is to be conducted at any premises of a work furlough employer, no prisoners employed by the employer under this Act shall be permitted to participate in the election].

Sec. 5. DISCIPLINARY PROCEEDINGS [WAGES AND SALARIES OF PRISONERS]. (a) On transfer, the inmate is subject to supervision by the board and shall obey the orders of the board.

(b) An officer assigned by the board to supervise an inmate transferred under this Act must make periodic written reports to the board concerning the inmate's adjustment. The officer shall immediately report to the department and to the board in writing if the officer determines there are reasonable grounds to believe that the inmate has violated the terms of the inmate's transfer agreement or the rules of the work furlough facility. The officer may include in the report the officer's recommendation as to the disciplinary action the department or the board should take in the case. The officer may also recommend to the board that it rescind or revise the inmate's presumptive parole date. The department or the board may require an agent of the board or the work furlough facility to conduct a fact-finding inquiry before taking a disciplinary action that the department or the board considers appropriate in the case.

(c) If the board has an administrative need to return the inmate to the custody of the department or if the board determines that there are reasonable grounds to believe that a violation has occurred, the board may return the inmate to the custody of the department, and the department may reassign the inmate to a regular unit of the department. If the officer reporting reasonable grounds to believe that a violation has occurred recommends a disciplinary action, the department or the board shall follow the recommendation unless it determines that another disciplinary action is more appropriate. If the officer recommends rescission or revision of the inmate's presumptive parole date, the board shall rescind or revise the date unless it determines the action is inappropriate.

(d) During the period after an inmate is transferred to a work furlough facility under this Act and before the inmate is released on parole, the board may award good conduct time to the inmate and order forfeited good conduct time earned by the inmate during the period, in the same amounts and in the same manner as the director of the department awards good conduct time to inmates in the department and orders good conduct time forfeited under Article 6181-1, Revised Statutes. [The wages and salaries of those prisoners employed in the free community may be paid to the department of corrections by the employer, or the department of corrections may require that the prisoner surrender such of the earnings, less standard deductions required by law, to be disbursed as hereinafter provided. The director shall cause the same to be deposited in a trust checking account and shall keep a record showing the status of the account of such prisoner. Such accounts and records shall be audited at least once annually by the state auditor, who shall prepare a written report or reports of such audit or audits to the legislative budget board. Such wages or salary shall be disbursed only as provided in this Act and for tax purposes shall be considered to be income of the prisoner.]

[Sec. 6.—DISBURSEMENT OF WAGES OR SALARIES. Every prisoner gainfully employed under work furlough privileges is liable for the cost of his keep in the prison or quarters as may be fixed by the department of corrections. Such payments shall be deposited to the general operating expenses of the department of corrections. After deduction of such amounts the director of the department of corrections shall disburse the wages or salaries of employed prisoners for the following purposes and in the order stated:

(1) necessary travel expense to and from work and other incidental expenses of the prisoner;

(2) support of the prisoner's dependents, if any;

(3) restitution or reparation to the victim of the prisoner's crime for which he is serving a term of imprisonment, the total amount of such restitution or reparation as may be established by the court and entered in the judgment of the court that sentenced the prisoner to his term of imprisonment;

(4) the balance, if any, to the prisoner upon his discharge.

[Sec. 7.—TIME CREDITS. Prisoners employed under this Act shall be eligible for time credits in the same manner as other prisoners in the State Prison System.]

[Sec. 8.—PRISONER NOT AN AGENT OF STATE. No prisoner granted work furlough privileges under the provisions of this Act shall be deemed to be an agent, employee, or involuntary servant of the department of corrections while working in the free community or while going to and from such employment.]

Sec. 6 [9]. RIGHTS OF INMATES [PRISONERS]. Nothing in this Act is intended to restore, in whole or in part, the civil rights of any inmate [prisoner]. Inmates [However, prisoners] compensated under this Act shall not come within the provisions of the Workmen's Compensation Act, as amended, and shall not be entitled to benefits thereunder on behalf of themselves or [as well as] any other persons.

[Sec. 10.—REPORTS. The department of corrections shall prepare an annual report to be filed not later than 60 days following the close of each fiscal year with the governor, the lieutenant governor, members of the legislature and the legislative budget board showing the operation and administration of the Act, together with such recommendations and suggestions as deemed advisable.]

[Sec. 11.—BONDING OF ADMINISTRATOR OF PROGRAM. The department of corrections shall require the administrator and such assistants as it may deem necessary, of the work furlough program hereinabove authorized to execute a bond in the sum of \$10,000 payable to the State of Texas, conditioned upon the faithful discharge of his duties, with a solvent surety company licensed to do business in Texas as surety.]

SECTION 4.20. Section 3, Article 6203c-11, Revised Statutes, is amended by adding Subsection (e) to read as follows:

(e) The Texas Department of Corrections shall make available in the six-month period preceding an inmate's tentative parole month, as established under Section 8(e), Article 42.18, Code of Criminal Procedure, to each appropriate inmate with a history of alcohol or drug abuse an intensive program designed to assist the inmate in understanding the inmate's alcohol or drug dependency problem and preparing for a chemically free transition from the department to life outside of the department. The program provided by the department under this subsection should contain instruction in recognized chemical dependency recovery principles, personality development, employment preparation, and other recognized treatment methods, and must also provide a sufficient number of individual and group sessions to assist inmates in receiving the full benefits of the program. The department may use suitable inmates as peer counselors in the program, but must ensure that the peer counselors do not exercise any disciplinary authority over other inmates. The department shall actively pursue federal grants for the purpose of helping fund the program established under this section.

SECTION 4.21. The Texas Unemployment Compensation Act (Article 5221b-1 et seq., Vernon's Texas Civil Statutes) is amended by adding Section 11e to read as follows:

Sec. 11e. ADMINISTRATION OF "PROJECT RIO." (a) In this section, "program" means the project for reintegration of offenders (Project RIO).

(b) Project RIO is a statewide employment referral program designed to reintegrate into the labor force persons formerly confined in the institutional division of the Texas Department of Criminal Justice. The Texas Department of Criminal Justice and the Commission shall cooperate to maximize the effectiveness of the program. For that purpose, administration of the program is to be performed by the Commission. The Texas Department of Criminal Justice and the Commission shall adopt a memorandum of understanding that establishes the respective responsibilities of each agency and of the divisions within the Texas Department of Criminal Justice. The memorandum of understanding shall establish:

(1) the role of the institutional division of the Texas Department of Criminal Justice in ascertaining and encouraging an inmate's chances for employment by:

(A) providing vocational and educational assessment while the person is incarcerated in the division; and

(B) on release, referral of the person to the program through the person's parole officer;

(2) the role of the community justice assistance division and the Board of Pardons and Paroles division of the Texas Department of Criminal Justice in:

(A) encouraging and referring persons to the program;

and
(B) ensuring that those persons participate in the program and avail themselves of its services;

(3) the role of the Commission in developing and maintaining a statewide network for finding positions of employment that require the skills possessed by program participants and in helping those participants to secure employment; and

(4) the methods by which the Commission shall coordinate its efforts under this section with the operations of service providers operating under the Texas Job-Training Partnership Act (Article 4413(52), Vernon's Texas Civil Statutes).

(c) The Commission shall coordinate the development of the memorandum of understanding. The Texas Department of Criminal Justice shall adopt rules as

necessary to implement the memorandum and may amend the memorandum and those rules as necessary.

(d) The administrator of the Commission shall designate a person to serve as state director of the program to coordinate the efforts of the affected state agencies and to expedite the delivery of services to participants in the program, including prospective employers.

(e) The program director shall:

(1) propose, for adoption by the Commission, standards and guidelines for the operation of the program;

(2) obtain information from appropriate state agencies and offices affiliated with the program to determine any necessary changes in the program;

(3) disseminate information about the program on a statewide basis; and

(4) train Commission staff to assist in the operation of affiliated services.

SECTION 4.22. Sections 5 and 6, Article 42.03, Code of Criminal Procedure, are repealed.

SECTION 4.23. Section 15(f)(2), Article 42.12, Code of Criminal Procedure, is repealed.

ARTICLE 5

SECTION 5.01. Article 42.18, Code of Criminal Procedure, is amended to read as follows:

Art. 42.18. ADULT PAROLE AND MANDATORY SUPERVISION LAW

Sec. 1. INTENT. It is the intent of this article to provide for the release of appropriate persons on parole and for the method thereof, to designate the Board of Pardons and Paroles division of the Texas Department of Criminal Justice as the agency of state government with exclusive authority to determine paroles, and to further designate the board as responsible for the investigation and supervision of persons released on parole or mandatory supervision and the revocation of parole or mandatory supervision for those who fail to comply with conditions of release. ~~[It is the intent of this article to aid all prisoners to readjust to society upon completion of their period of incarceration by providing a program of mandatory supervision for those prisoners not released on parole or through executive clemency and to designate the board as the agency of government responsible for the program.]~~ It is the final intent [purpose] of this article to remove from existing statutes the limitations, other than questions of constitutionality, that have acted as barriers to effective systems of parole and mandatory supervision in the public interest.

Sec. 2. DEFINITIONS. In ~~[This article may be cited as the "Adult Parole and Mandatory Supervision Law."]~~

~~[Unless the context otherwise requires, the following definitions shall apply to the specified words and phrases as used in]~~ this article:

(1) ~~[a.]~~ "Parole" means the conditional release of an eligible prisoner from the physical custody of the institutional division of the Texas Department of Criminal Justice ~~[Texas Department of Corrections]~~ to serve the remainder of his sentence under the supervision and control of the board ~~[Board of Pardons and Paroles]~~. Parole shall not be construed to mean a commutation of sentence or any other form of executive clemency.

(2) ~~[b.]~~ "Mandatory supervision" means the release of an eligible prisoner from the physical custody of the institutional division ~~[Texas Department of Corrections]~~ but not on parole, to serve the remainder of his sentence under the supervision and control of the board ~~[Board of Pardons and Paroles]~~. Mandatory supervision may not be construed as a commutation of sentence or any other form of executive clemency.

(3) [c:] "Parole officer" means a person duly appointed by the [executive] director and assigned the duties of assessment of needs, investigation, and supervision of paroled prisoners and prisoners released to mandatory supervision to see that parolees and mandatory supervision releasees are complying with the conditions of parole or mandatory supervision, as applicable.

(4) [d:] "Board" means the Board of Pardons and Paroles division of the Texas Department of Criminal Justice.

(5) "Director" [c: "~~Executive director~~"] means the [executive] director of the board [~~Board of Pardons and Paroles~~].

(6) "Community supervision and corrections department" means a department established by a district judge or district judges under Article 42.131 of this code.

(7) "Institutional division" means the institutional division of the Texas Department of Criminal Justice.

Sec. 3. SIZE OF BOARD. [(a)] The board [~~Board of Pardons and Paroles~~] is [~~established as~~] a division of the Texas Department of Criminal Justice [statutory agency]. The board consists of six members appointed by the governor with the advice and consent of the senate.

Sec. 4. TERMS; VACANCIES. (a) [(b) ~~Members of the board must be resident citizens of this state and must have been residents for a period of not less than two years immediately preceding their appointment.~~] Members hold office for [~~staggered~~] terms of six years. The terms expire on February 1 [~~January 31~~] of odd-numbered years.

(b) [(c)] If a vacancy occurs, the governor shall appoint a person to serve the remainder of the unexpired term in the same manner as other appointments.

[(d) ~~The board shall administer the provisions of this article respecting determinations of which prisoners shall be paroled and the conditions of parole and mandatory supervision, may recommend the revocation of conditional pardons by the governor, and may revoke paroles and releases to mandatory supervision. The board shall make appropriate recommendations to the governor in executive clemency matters. Keeping the goals of this article in mind, the board shall have the authority to determine the degree and intensity of supervision a prisoner released on parole or released to mandatory supervision should receive.~~]

Sec. 4 [3A]. ELIGIBILITY FOR MEMBERSHIP. (a) Board members must be representative of the general public. A member must be a resident citizen of this state and must have resided in this state for the two years preceding appointment. A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization [~~regulated by the agency or~~] receiving funds from the Texas Department of Criminal Justice [agency];

(2) owns or controls directly or indirectly more than a 10 percent interest in a business entity or other organization regulated by the Texas Department of Criminal Justice [agency] or receiving funds from the department [agency]; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the Texas Department of Criminal Justice [agency], other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

(b) An employee[~~officer~~] or paid consultant of a trade association in the field of criminal justice may not be a member or employee of the board. A person who is the spouse of any [officer] manager[;] or paid consultant of a trade association in the field of criminal justice may not be a member of the board and may not be an employee, including an employee exempt from the state's classification plan,

who is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule. For the purposes of this section, a trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

(c) A person who is required to register as a lobbyist under Chapter 305, Government Code, by virtue of the person's activities for compensation in or on behalf of a profession related to the operation of the board, may not serve as a member of the board or act as the general counsel to the board.

(d) Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

(e) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) of this section for appointment to the board;

(2) does not maintain during the member's service on the board the qualifications required by Subsection (a) of this section for appointment to the board;

(3) violates a prohibition established by Subsections (b) and (c) of this section;

(4) is unable to discharge the member's duties for a substantial part of the term for which the member was appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during each calendar year, except when the absence is excused by majority vote of the board.

(f) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

(g) If the [executive] director has knowledge that a potential ground for removal exists, the [executive] director shall notify the chairman of the Texas Board of Criminal Justice [board] of the ground. The chairman of the Texas Board of Criminal Justice [board] shall then notify the governor that a potential ground for removal exists.

~~[(h) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding fiscal year. The form of the annual report and the reporting time are as provided in the General Appropriations Act.~~

~~[(i) The executive director shall develop an intraagency career ladder program, one part of which shall require the intraagency posting, concurrently with any public posting, of all nonentry-level positions.~~

~~[(j) The executive director shall develop a system under which the job performance of employees is evaluated annually. All merit pay for agency employees must be based on the system established under this section.~~

~~[(k) The state auditor shall audit the financial transactions of the agency at least once during each biennium.~~

~~[(l) The board shall prepare information of public interest describing the functions of the board and describing the procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies.~~

~~[(m) The board shall establish methods by which consumers or service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board.~~

~~[(n) The agency shall keep an information file about each complaint filed with the agency that relates to services provided by the agency.~~

~~[(f) If a written complaint is filed with the agency that relates to services provided by the agency, the agency, at least as frequently as quarterly and until final disposition of the complaint, shall notify the complainant and the subject of the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.~~

~~[(p) The executive director shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity by which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement shall include:~~

~~[(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;~~

~~[(2) a comprehensive analysis of the agency's work force that meets federal and state guidelines;~~

~~[(3) procedures by which a determination can be made of significant underutilization in the agency work force of all persons of whom federal or state guidelines encourage a more equitable balance; and~~

~~[(4) reasonable methods to appropriately address areas of significant underutilization in the agency work force of all persons of whom federal or state guidelines encourage a more equitable balance.~~

~~[(q) The policy statements shall be filed with the governor's office, cover a one-year period, and be updated at least annually. The governor's office shall develop a biennial report to the legislature based on the information submitted. The report may be made separately or as a part of other biennial reports made to the legislature.~~

~~[(r) The board shall inform its members and employees as often as is necessary of:~~

~~[(1) the qualifications for office or employment prescribed by this article; and~~

~~[(2) their responsibilities under applicable law relating to standards of conduct for state officers or employees.~~

~~[(s) The board shall adopt policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.]~~

Sec. 5 [4]. **SUNSET PROVISIONS.** The board [Board of Pardons and Paroles] is subject to the Texas Sunset Act, but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which the Texas Department of Criminal Justice is [state agencies abolished effective September 1, 1987, and every 12th year after 1987, are] reviewed.

Sec. 6 [5]. **COMPENSATION OF BOARD MEMBERS; DIRECTOR.** (a) The members of the board shall give full time to the duties of their office and shall be paid such salaries as the legislature may determine in appropriation Acts. The governor shall biennially designate one member to serve as chairman and one member to serve as vice-chairman.

(b) [The board shall meet at the call of the chairman and from time to time as may otherwise be determined by majority vote of the board. A majority of the board shall constitute a quorum for the transaction of all business.]

[(c) The board shall adopt an official seal of which the courts shall take judicial notice. Decisions of the board shall be by majority vote.]

[(d) The board shall keep a record of its acts and shall notify each institution of its decisions relating to the persons who are confined therein. At the close of each fiscal year the board shall submit to the governor and to the legislature a report with statistical and other data of its work.]

[(e) All minutes of the board and decisions relating to mandatory supervision, parole, pardon, and clemency shall be matters of public record and subject to public inspection at all reasonable times.]

~~[(f)] The [board shall employ an] executive director of the Texas Department of Criminal Justice [who] shall hire the director. The director is [be responsible to the board for the conduct of the affairs of the agency and shall be] responsible for the day-to-day administration of the board [agency].~~

~~[(g) The board shall adopt policies that clearly define the respective responsibilities of the board and the staff of the agency and that state that the executive director answers directly to the chairman of the board:~~

~~[Sec. 6. The necessary office quarters shall be provided for the board in the manner that the same are furnished to other departments, boards, commissions, bureaus, and offices of the state.]~~

Sec. 7. DUTIES OF BOARD. (a) The board shall:

(1) determine which prisoners are to be released on parole;

(2) determine and enforce conditions of parole and mandatory supervision;

(3) perform the constitutional duties imposed on the board by Article IV, Section 11, of the Texas Constitution; and

(4) contract for transitional facilities for pre-parolees, parolees, and persons released to mandatory supervision [To aid and assist the Board of Pardons and Paroles in parole and mandatory supervision decisions, provision is hereby made for the employment of parole commissioners].

(b) There shall be employed no less than six commissioners subject to the approval of a majority of the members of the board.

(c) A person may not be employed as a parole commissioner unless the person has a degree from an accredited college or university in one of the following areas and five years of full-time paid employment in one or more of the following areas: criminal justice, corrections, criminology, law, law enforcement, social work, sociology, psychology, psychiatry, medicine, or an area determined by the board to be relevant as preparation for employment as a parole commissioner.

(d) The commissioners shall assist the board in parole decisions and mandatory supervision revocation decisions. The votes on individual recommendations by the commissioners on parole decisions and mandatory supervision revocation decisions shall be independent and have the same force and effect as votes by the board. The commissioners may assist the board in other matters as determined by the board.

(e) A parole panel, as [hereinafter] provided in Subsection (e) of this section, may recommend the granting, denial, or revocation of parole and the revocation of mandatory supervision status and may conduct parole revocation hearings and mandatory supervision revocation hearings. The commissioners shall perform their duties as directed by the board.

(f) The Texas Board of Criminal Justice [board] shall develop and implement a policy that clearly defines circumstances under which a board member or parole commissioner should disqualify himself from voting on a parole decision or on a decision to revoke parole or mandatory supervision.

(g) The Texas Board of Criminal Justice [board] may provide and promulgate a written plan for the administrative review by the entire Board of Pardons and Paroles of actions taken by a parole panel.

(h) In matters of parole, [and] release to mandatory supervision, and revocation of parole or mandatory supervision, the board members and commissioners shall [may] act in panels comprised of three persons in each panel. The composition of the respective panels shall be designated by the director [board]. A majority of each panel shall constitute a quorum for the transaction of its business, and its decisions shall be by majority vote. [The functions given to the board throughout this article may be enlarged and extend to the parole panels, as provided by board rules. The powers of the board and the board members can be delegated by the board to the parole panels and to the commissioners as needed for the convenience of and assistance to the board:]

Sec. 8. ELIGIBILITY FOR RELEASE; CONDITIONS ON RELEASE. (a) The board is authorized to release on parole any person confined in any penal or correctional institution who is eligible for parole under ~~[Subsection (b) of]~~ this section. The board may consider a person for release on parole if the person has been sentenced to a term of imprisonment in the institutional division ~~[Texas Department of Corrections]~~, is confined in a jail in this state, a federal correctional institution, or a jail or a correctional institution in another state, and is eligible for parole ~~[under Subsection (b) of this section]~~. The board may ~~[shall]~~ release a person on parole during the tentative parole month established for the person if ~~[unless]~~ the board determines that the person's release will not increase the likelihood of harm to the public or that the person has not failed to progress in the manner required by the board in Subsection (c) of this section. The ~~institutional division~~ may ~~[department shall]~~ provide the board with sentence time credit information on persons described in this subsection and the board may develop its own sentence time credit information on persons described by this subsection, but in either event, good time credit shall be calculated for a person as if the person were confined in the institutional division during the entire time the person was actually confined ~~[section]~~. The period of parole shall be equivalent to the maximum term for which the prisoner was sentenced less calendar time actually served on the sentence. Every prisoner while on parole shall remain in the legal custody of the state and shall be amenable to conditions of supervision ordered by the board. All paroles shall issue upon order of the board.

(b)(+) A prisoner under sentence of death is not eligible for parole. If a prisoner is serving a sentence for the offenses listed in Subdivision (1), Subsection (a), Section 3g, Article 42.12 of this code, or if the judgment contains an affirmative finding under Subdivision (2) of Subsection (a) of Section 3g of that article, he is not eligible for release on parole until his actual calendar time served, without consideration of good conduct time, equals one-fourth of the maximum sentence or 15 calendar years, whichever is less, but in no event shall he be eligible for release on parole in less than two calendar years. All other prisoners shall be eligible for release on parole when their calendar time served plus good conduct time equals one-fourth of the maximum sentence imposed or 15 years, whichever is less.

~~[(2) If a prisoner is sentenced to consecutive felony sentences under Article 42.08 of this code, the board shall designate during each sentence the date, if any, on which the prisoner would have been eligible for release on parole if the prisoner had been sentenced to serve a single sentence.~~

~~[(3) For the purposes of Article 42.08 of this code, the judgment and sentence of a prisoner sentenced for a felony, other than the last sentence in a series of consecutive sentences, cease to operate:~~

~~[(A) when the actual calendar time served by the prisoner equals the sentence imposed by the court; or~~

~~[(B) on the date the board designates as the date on which the prisoner would have been eligible for release on parole if the prisoner had been sentenced to serve a single sentence.~~

~~[(4) The board may not treat consecutive sentences as a single sentence for purposes of parole and may not release on parole a prisoner sentenced to serve consecutive felony sentences earlier than the date on which the prisoner becomes eligible for release on parole from the last sentence imposed on the prisoner.~~

~~[(5) Calendar time served and good conduct time accrued by a prisoner that are used by the board in determining when a judgment and sentence cease to operate may not be used by the board:~~

~~[(A) for the same purpose in determining that date in a subsequent sentence in the same series of consecutive sentences; or~~

~~[(B) for determining the date on which a prisoner becomes eligible for release on parole from the last sentence in a series of consecutive sentences.]~~

(c) Except as otherwise provided by this subsection, a prisoner who is not on parole shall be released to mandatory supervision by order of the board when the calendar time he has served plus any accrued good conduct time equal the maximum term to which he was sentenced. A prisoner released to mandatory supervision shall, upon release, be deemed as if released on parole. To the extent practicable, arrangements for the prisoner's proper employment, maintenance, and care shall be made prior to his release to mandatory supervision. The period of mandatory supervision shall be for a period equivalent to the maximum term for which the prisoner was sentenced less calendar time actually served on the sentence. The time served on mandatory supervision is calculated as calendar time. Every prisoner while on mandatory supervision shall remain in the legal custody of the state and shall be amenable to conditions of supervision ordered by the board. A prisoner may not be released to mandatory supervision if the prisoner is serving a sentence for an offense and the judgment for the offense contains an affirmative finding under Subdivision (2), Subsection (a), Section 3g, Article 42.12, of this code or if the prisoner is serving a sentence for:

- (1) a first degree felony under Section 19.02, Penal Code (Murder);
- (2) a capital felony under Section 19.03, Penal Code (Capital Murder);
- (3) a first degree felony or a second degree felony under Section 20.04, Penal Code (Aggravated Kidnapping);
- (4) a second degree felony under Section 22.011, Penal Code (Sexual Assault);
- (5) a second degree or third degree felony under Section 22.02, Penal Code (Aggravated Assault);
- (6) a first degree felony under Section 22.021, Penal Code (Aggravated Sexual Assault);
- (7) a first degree felony under Section 22.03, Penal Code (Deadly Assault on Law Enforcement or Corrections Officer or Court Participant);
- (8) a first degree felony under Section 22.04, Penal Code (Injury to a Child or an Elderly Individual);
- (9) a first degree felony under Section 28.02, Penal Code (Arson);
- (10) a second degree felony under Section 29.02, Penal Code (Robbery);
- (11) a first degree felony under Section 29.03, Penal Code (Aggravated Robbery); or
- (12) a first degree felony under Section 30.02, Penal Code (Burglary), if the offense is punished under Subsection (d)(2) or (d)(3) of that section.

(d)(1) If a prisoner is sentenced to consecutive felony sentences under Article 42.08 of this code, the board shall designate during each sentence the date, if any, on which the prisoner would have been eligible for release on parole if the prisoner had been sentenced to serve a single sentence.

(2) For the purposes of Article 42.08 of this code, the judgment and sentence of a prisoner sentenced for a felony, other than the last sentence in a series of consecutive sentences, cease to operate:

(A) when the actual calendar time served by the prisoner equals the sentence imposed by the court; or

(B) on the date the board designates as the date on which the prisoner would have been eligible for release on parole if the prisoner had been sentenced to serve a single sentence.

(3) The board may not treat consecutive sentences as a single sentence for purposes of parole and may not release on parole a prisoner sentenced to serve

consecutive felony sentences earlier than the date on which the prisoner becomes eligible for release on parole from the last sentence imposed on the prisoner.

(4) Calendar time served and good conduct time accrued by a prisoner that are used by the board in determining when a judgment and sentence cease to operate may not be used by the board:

(A) for the same purpose in determining that date in a subsequent sentence in the same series of consecutive sentences; or

(B) for determining the date on which a prisoner becomes eligible for release on parole from the last sentence in a series of consecutive sentences.

(e) Not later than the 120th day after the date on which a prisoner is admitted to the institutional division [~~Texas Department of Corrections~~], the board shall secure all pertinent information relating to the prisoner, including but not limited to the court judgment, any sentencing report, the circumstances of the prisoner's offense, the prisoner's previous social history and criminal record, the prisoner's physical and mental health record, a record of the prisoner's conduct, employment history, and attitude in prison, and any written comments or information provided by local trial officials or victims of the offense. Except as otherwise provided by this subsection, within the 120-day period, the board shall establish a tentative parole month for the prisoner based on information gathered under this subsection and a proposed program of measurable institutional progress the board determines the prisoner must meet before being released on parole. The board is not required to establish a tentative parole month and program of progress if the board determines that to do so would be inappropriate in the prisoner's case and indicates [indicate] that determination in the prisoner's file. The board shall notify the institutional division [~~Texas Department of Corrections~~] of each prisoner's tentative parole month and proposed program of measurable institutional progress. Within 30 days of receipt of the board's notice, the institutional division [~~Texas Department of Corrections~~] shall advise the board if any of the proposed programs of measurable institutional progress or the requirements of those programs cannot be achieved within the prisoner's unit of incarceration. The tentative parole month may not be a date that is earlier than the prisoner's initial parole eligibility date, as calculated or projected under Subsection (b) of this section. The board may revise a tentative parole month established under this subsection at any time the board determines is proper. The institutional division [department] shall work closely with the board to carry out the tentative parole program. The board and the institutional division [department] shall adopt a memorandum of understanding that establishes the respective responsibility of the board and the institutional division [department] in the operation of the tentative parole program and in the monitoring of the progress of inmates in the institutional division [department]. The memorandum must also establish an information committee that includes representatives of the board and the institutional division [department] and meets regularly to assess information needs, solve information flow problems, and reduce duplication in information gathering. The information committee shall work towards the development of a common data base that meets the needs of both the board and the institutional division [department]. The board and the institutional division [department] shall coordinate the development of the memorandum of understanding and each by rule shall adopt the memorandum.

(f)(1) In this subsection: (A) "close relative of a deceased victim" means a person who was the spouse of a deceased victim at the time of the victim's death, a parent of the deceased victim, or an adult brother, sister, or child of the deceased victim; (B) "guardian of a victim" means a person who is the legal guardian of a victim, whether or not the legal relationship between the guardian and victim exists because of the age of the victim or the physical or mental incompetency of the

victim; and (C) "victim" means a person who is a victim of sexual assault, kidnapping, or aggravated robbery or who has suffered bodily injury or death as the result of the criminal conduct of another.

(2) Before considering for parole a prisoner who is serving a sentence for an offense in which a person was a victim, the board, using the name and address provided on the victim impact statement, shall make a reasonable effort to notify a victim of the prisoner's crime or if the victim has a legal guardian or is deceased, to notify the legal guardian or close relative of the deceased victim. If the notice is sent to a guardian or close relative of a deceased victim, the notice must contain a request by the board that the guardian or relative inform other persons having an interest in the matter that the prisoner is being considered for parole. If a hearing is held, the board shall allow a victim, guardian of a victim, close relative of a deceased victim, or a representative of a victim or his guardian or close relative to provide a written statement. This subsection may not be construed to limit the number of persons who may provide statements for or against the release of the prisoner on parole. The board shall consider the statements and the information provided in a victim impact statement in determining whether or not to recommend parole. However, the failure of the board to comply with notice requirements of this subsection is not a ground for revocation of parole. ~~[Before ordering the parole of any prisoner, the board may have the prisoner appear before it and interview him. A parole shall be ordered only for the best interest of society, not as an award of clemency; it shall not be considered to be a reduction of sentence or pardon. The board shall develop and implement standard parole guidelines that shall be the basic criteria on which parole decisions are made. The parole guidelines shall be developed according to an acceptable research method and shall be based on the seriousness of the offense and the likelihood of favorable parole outcome. The board shall review the parole guidelines periodically and make any revisions considered necessary by virtue of statistical analysis of board actions using acceptable research methodology. A prisoner shall be placed on parole only when arrangements have been made for his employment or for his maintenance and care and when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every prisoner while on parole shall remain in the legal custody of the state and shall be amenable to the conditions of supervision ordered by the board.]~~

(3) ~~[(f-3)]~~ If a victim, guardian of a victim, or close relative of a deceased victim would be entitled to notification of parole consideration by the board but for failure by that person to provide a victim impact statement containing the person's name and address, the person is nonetheless entitled to receive notice if the person files with the board a written request for that notification. After receiving such a written request, the board shall grant to the person all the privileges to which the person would be entitled had the person submitted a victim impact statement. Before a prisoner is released from the institutional division ~~[Texas Department of Corrections]~~ on parole or on the release of a prisoner on mandatory supervision, the board shall give notice of the release to any person entitled to notification of parole consideration for the prisoner because the person filed with the board a victim impact statement or a request for notification of a parole consideration.

(4) ~~[(f-4)]~~ Except as necessary to comply with this section, the board or the institutional division ~~[Texas Department of Corrections]~~ may not disclose to any person the name or address of a victim or other person entitled to notice under this section unless the victim or that person approves the disclosure or the board or the department is ordered to disclose the information by a court of competent jurisdiction after the court determines that there is good cause for disclosure.

(5) ~~Before ordering the parole of any prisoner, the board may have the prisoner appear before it and interview him. A parole shall be ordered only for the~~

best interest of society, not as an award of clemency; it shall not be considered to be a reduction of sentence or pardon. The board shall develop and implement standard parole guidelines that shall be the basic criteria on which parole decisions are made. The parole guidelines shall be developed according to an acceptable research method and shall be based on the seriousness of the offense and the likelihood of favorable parole outcome. The board shall review the parole guidelines periodically and make any revisions considered necessary by virtue of statistical analysis of board actions using acceptable research methodology. A prisoner shall be placed on parole only when arrangements have been made for his employment or for his maintenance and care and when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every prisoner while on parole shall remain in the legal custody of the state and shall be amenable to the conditions of supervision ordered by the board.

(g)(†) The Texas Board of Criminal Justice [board] may adopt such other reasonable rules not inconsistent with law as it may deem proper or necessary with respect to the eligibility of prisoners for parole and mandatory supervision, the conduct of parole and mandatory supervision hearings, or conditions to be imposed upon parolees and persons released to mandatory supervision. Each person to be released on parole shall be furnished a written statement and contract setting forth in clear and intelligible language the conditions and rules of parole. [The conditions shall include the making of restitution or reparation to the victim of the prisoner's crime, in an amount not greater than such restitution or reparation as established by the court and entered in the sentence of the court which sentenced the prisoner to his term of imprisonment, and shall require reasonable progress toward restitution or reparation.] The board may include as a condition of parole or mandatory supervision any condition that a court may impose on a probationer under Article 42.12 of this code, including the condition that the person released submit to testing for controlled substances or submit to electronic monitoring if the board determines that absent testing for controlled substances or participation in an electronic monitoring program the person would not be released on parole [that the prisoner pay any fine, cost, or fee, including a fee paid to a county-paid public defender or appointed counsel under Article 26.05 of this code that is imposed on the prisoner in the prisoner's sentence. The board may include as a condition of parole for a prisoner released after serving a sentence for an offense under Section 21.11, 22.011, 22.021, or 22.04, Penal Code, that the prisoner attend psychological counseling at the direction of the parole officer supervising the prisoner at the prisoner's own expense, and keep the officer informed of his attendance at counseling sessions. The board may include as a condition of parole that the prisoner attend basic education classes approved by the board for functionally illiterate parolees]. Acceptance, signing, and execution of the contract by the inmate to be paroled shall be a precondition to release on parole. Persons released on mandatory supervision shall be furnished a written statement setting forth in clear and intelligible language the conditions and rules of mandatory supervision.

(2) In addition to the conditions imposed by the board under Subdivision (1) of this subsection, the board may require as a condition of parole or release to mandatory supervision that a defendant convicted of an offense described by Article 17.41(a) of this code not directly communicate with the victim of the offense or go near a residence, school, or other location, as specifically described in the contract or statement, frequented by the victim. In imposing the condition, the board may grant the defendant supervised access to the victim. To the extent that a condition imposed under this subdivision conflicts with an existing court order granting possession of or access to a child, the condition imposed under this subdivision prevails for a period specified by the board, not to exceed 90 days.

~~[(3) The board may require as a condition of parole that the person released submit to electronic monitoring if the board determines that absent an electronic monitoring system the person would not be released on parole.~~

~~[(4)] The board may also require as a condition of parole or release to mandatory supervision that the person make payments in satisfaction of damages the person is liable for under Article 6184p, Revised Statutes.~~

~~[(5) Unless specifically limited to a particular category of releasees, conditions imposed under this subsection apply both to inmates released under the provisions of this article and to inmates released under the provisions of Article 6184o, Revised Statutes. The conditions shall, if the board considers it feasible, include a requirement that the inmate work not less than 10 hours a week in a community service program. The conditions may include a requirement that the releasee submit to a program of supervision that is more intensive than the program required of most releasees. The program may consist of intensive supervision parole, specialized caseload supervision, surveillance parole, home confinement, electronic monitoring, or any other element required by the department. Each person to be released on parole shall be furnished a written statement and contract setting forth in clear and intelligible language the conditions and rules of parole.]~~

~~(h) [The board shall certify and contract with halfway houses and shall use them to the maximum extent:~~

~~[(1) to provide close supervision, treatment, and assistance in reintegration;~~

~~[(2) to help persons released on parole make restitution or reparation and fulfill the obligations of law-abiding citizens; and~~

~~[(3) to reduce recidivism.~~

~~[(i)] It shall be the duty of the board at least 10 days before ordering the parole of any prisoner or at least 10 days after recommending the granting of executive clemency by the governor to notify the sheriff, the prosecuting attorney, and the district judge in the county where such person was convicted and the county to which the prisoner is released that such parole or clemency is being considered by the board or by the governor. For any case in which there was a change of venue, the board shall notify those same officials in the county in which the prosecution was originated if, no later than 30 days after the date on which the defendant was sentenced, those officials request in writing that the board give them notice under this section of any future release of the prisoner. Additionally, no later than the 10th day after the board orders the transfer of a prisoner to a halfway house under this article, the board shall notify the sheriff of the county in which the prisoner was convicted and shall notify the sheriff of the county in which the halfway house is located and the attorney who represents the state in the prosecution of felonies in that county. The notice must state the prisoner's name, the county in which the prisoner was convicted, and the offense for which the prisoner was convicted.~~

~~[(j) The Board of Pardons and Paroles, the Texas Rehabilitation Commission, the Texas Department of Health, the Texas Commission on Alcohol and Drug Abuse, and the Texas Adult Probation Commission shall execute a memorandum of understanding that establishes procedures to eliminate or reduce duplication of functions in certifying, licensing, or inspecting halfway houses under their jurisdiction. Each agency by rule shall adopt the memorandum of understanding. The procedures established shall provide these agencies with information necessary for certification purposes. The Board of Pardons and Paroles shall coordinate development of the memorandum of understanding.~~

~~[(k) The board is authorized to contract with probation departments for the supervision of persons released on parole or mandatory supervision for supervision by an adult probation officer, provided that the contracts provide the board with a cost savings and are subject to the approval of the judge or judges that employ the~~

officer. The board shall report annually all such payments made to the Texas Adult Probation Commission, the governor, and the legislature:]

(i) [(#)] As an element of the board's halfway house program, the board, in conjunction [cooperation] with the institutional division [Texas Department of Corrections], shall utilize halfway houses for the purpose of diverting from housing in regular units of the institutional division [department of corrections] suitable low-risk prisoners and other prisoners who would benefit from a smoother transition from incarceration to conditional freedom. To accomplish this purpose, the board, after reviewing all available pertinent information, may designate a presumptive parole date for any inmate who (i) is not serving a sentence for an offense listed in Subdivision (1) of Subsection (a) of Section 3g of Article 42.12 of this code and whose judgment does not contain an affirmative finding under Subdivision (2) of Subsection (a) of Section 3g of that article; and (ii) has never been convicted of an offense listed in Subdivision (1) of Subsection (a) of Section 3g of that article and has never had a conviction, the judgment for which contains an affirmative finding under Subdivision (2) of Subsection (a) of Section 3g of that article. The presumptive parole date may not be a date which is earlier than the prisoner's initial parole eligibility date, as calculated or projected pursuant to Subsection (b) of this section. Before transferring a prisoner to a halfway house, the board shall send to the director of the halfway house all information relating to the prisoner that the board feels will aid the halfway house in helping the prisoner make a transition from prison to community life. If a prisoner for whom a presumptive parole date has been established is transferred into a preparole residence in a halfway house pursuant to the terms of Article 6166x-4, Revised Statutes, the board is responsible for his supervision. The board may rescind or postpone a previously established presumptive parole date on the basis of reports from agents of the board responsible for supervision or agents of the department of corrections acting in the case. If a prisoner transferred to preparole status has satisfactorily served his sentence in the halfway house to which he is assigned from the date of transfer to the presumptive parole date, without rescission or postponement of the date, the board shall order his release to parole and issue an appropriate certificate of release. The prisoner is subject to the provisions of this article governing release on parole.

(j) [(m)] In addition to other conditions of parole and release on mandatory supervision imposed under [Subsection (g) of] this section, the board shall require a prisoner released on parole or mandatory supervision to pay a parole supervision fee of \$10 to the board for each month during which the prisoner is under parole supervision. The fee applies to a prisoner released in another state who is required as a term of his release to report to a parole officer or supervisor in this state for parole supervision. On the request of the prisoner, the board may allow the prisoner to defer payments under this subsection. The prisoner remains responsible for payment of the fee and must make the deferred payment not later than two years after the date on which the payment becomes due. The board of the Texas Department of Criminal Justice shall establish rules relating to the method of payment required of the person on parole or mandatory supervision. Fees collected under this subsection by the board shall be remitted to the comptroller of public accounts, who shall deposit the fees in the general revenue fund of the state treasury. In a parole or mandatory supervision revocation hearing under Section 14 [15] of this article at which it is alleged only that the person failed to make a payment under this subsection, the inability of the person to pay as ordered by the board is an affirmative defense to revocation, which the person must prove by a preponderance of the evidence.

[(n) The board shall enter into a memorandum of understanding with the Texas Department of Mental Health and Mental Retardation to increase the availability of services to releasees diagnosed as mentally retarded or mentally ill:]

Sec. 9. DUTY TO PROVIDE BOARD WITH INFORMATION. It shall be the duty of any judge, district attorney, county attorney, police officer, or other public official of the state having information with reference to any prisoner eligible for parole to send in writing such information as may be in his possession or under his control to the board, upon request of any member or employee thereof.

Sec. 10. ACCESS TO PRISONERS. It shall be the duty of the institutional division ~~[all prison officials]~~ to grant to the members of the board or its properly accredited representatives access at all reasonable times to any prisoner, to provide for the board or such representatives facilities for communicating with and observing such prisoner, and to furnish to the board such reports as the board shall require concerning the conduct and character of any prisoner in their custody and any other facts deemed by the board pertinent in determining whether such prisoner shall be paroled.

Sec. 11. INFORMATION AND ARGUMENTS TO BOARD. The Texas Board of Criminal Justice ~~[board]~~ shall adopt ~~[formulate]~~ rules as to the submission and presentation of information and arguments to the Board of Pardons and Paroles division ~~[board]~~ for and in behalf of any person within the jurisdiction of ~~that~~ ~~[the]~~ board.

All persons presenting information or arguments to the Board of Pardons and Paroles division ~~[board]~~ shall submit therewith an affidavit stating whether any fee has been paid or is to be paid for their services in the case, the amount of such fee, if any, and by whom such fee is paid or to be paid.

Sec. 12. SUBPOENAS. The board shall have power to issue subpoenas requiring the attendance of such witnesses and the production of such records, books, papers, and documents as it may deem necessary for investigation of the case of any person before it. Subpoenas may be signed and oaths administered by any member of the board. Subpoenas so issued may be served by a sheriff, a constable, a police, parole, or probation officer, or another law enforcement officer in the same manner as similar process in courts of record having original jurisdiction of criminal actions. Any person who testifies falsely or fails to appear when subpoenaed or fails or refuses to produce such material pursuant to the subpoena shall be subject to the same orders and penalties to which a person before a court is subject. Any courts of record having original jurisdiction of criminal actions, upon application of the board, may in their discretion compel the attendance of witnesses, the production of such material, and the giving of testimony before the board, by an attachment for contempt or otherwise in the same manner as production of evidence may be compelled before such courts of record having original jurisdiction of criminal actions.

~~[Sec. 13. The board shall have the power and duty to make rules for the conduct of persons placed on parole and of persons released to mandatory supervision.]~~

Sec. 13 ~~[14]~~. WARRANTS. (a) A warrant for the return of a paroled prisoner, a prisoner released to mandatory supervision, a resident released to a preparole or work furlough program, a prisoner released on emergency reprieve or on furlough, or a person released on a conditional pardon to the institution from which he was paroled, released, or pardoned may be issued by the board in cases of parole or mandatory supervision, or by the board on order by the governor in other cases, when there is reason to believe that he has committed an offense against the laws of this state or of the United States, violated a condition of his parole, mandatory supervision, or conditional pardon, or when the circumstances indicate that he poses a danger to society that warrants his immediate return to incarceration. Such warrant shall authorize all officers named therein to take actual custody of the prisoner and return him to the institution from which he was released. Pending hearing, as hereinafter provided, upon any charge of parole

violation or violation of the conditions of mandatory supervision, a prisoner returned to custody shall remain incarcerated. If the board is otherwise authorized to issue a warrant under this subsection, the board may instead issue to a prisoner a summons requiring the prisoner to appear before the board or its designee for a hearing under Section 14 [15] of this article. The summons must state the time, place, date, and purpose of the hearing.

(b) A prisoner for whose return a warrant has been issued by the board shall, after the issuance of such warrant, be deemed a fugitive from justice and if it shall appear that he has violated the conditions or provisions of his mandatory supervision or parole, the time from the issuing of such warrant to the date of his arrest shall not be counted as any part of the time to be served under his sentence. The law now in effect concerning the right of the State of Texas to extradite persons and return fugitives from justice and Article 42.11 of this code concerning the waiver of all legal requirements to obtain extradition of fugitives from justice from other states to this state shall not be impaired by this article [Act] and shall remain in full force and effect.

Sec. 14 [15]. HEARINGS; SANCTIONS. (a) Whenever a prisoner or a person granted a conditional pardon is accused of a violation of his parole, mandatory supervision, or conditional pardon, on information and complaint by a law enforcement officer or parole officer, he shall be entitled to be heard on such charges before the Board of Pardons and Paroles division [board] or its designee under such rules as the Texas Board of Criminal Justice [board] may adopt; provided, however, said hearing shall be a public hearing and shall be held within 70 days of the date of arrest under a warrant issued by the Board of Pardons and Paroles division [board] or the governor and at a time and place set by that [the] board. The board may hold the hearing at a date later than the date otherwise required by this section if the board determines a delay is necessary to assure due process for the person. If the board determines that a parolee, mandatory supervisee, or person granted a conditional pardon has been convicted in a court of competent jurisdiction of a felony offense committed while an administrative releasee and has been sentenced by the court to a term of incarceration in a penal institution, the board's determination is to be considered a sufficient hearing and the board may revoke the parole or mandatory supervision or recommend to the governor revocation of a conditional pardon without further hearing, except that the board shall conduct a hearing to consider mitigating circumstances if requested by the parolee, mandatory supervisee, or person granted a conditional pardon. When the board has heard the facts, it may recommend to the governor that the conditional pardon be continued, revoked, or modified, or it may continue, revoke, or modify the parole or mandatory supervision, in any manner warranted by the evidence. ~~[If the person's conditional pardon, parole, or mandatory supervision is revoked, the person may be required to participate in an electronic monitoring program.]~~ The Texas Board of Criminal Justice [board] shall develop and implement a system of sanctions that may be imposed by the Board of Pardons and Paroles division [board; in its discretion]; on a person whose conditional pardon or release on parole or mandatory supervision is continued or modified. The board must make its recommendation or decision no later than the 30th day after the date of the hearing. When a person's parole, mandatory supervision, or conditional pardon is revoked, that person may be required to serve the portion remaining of the sentence on which he was released, such portion remaining to be calculated without credit for the time from the date of his release to the date of revocation. When a warrant is issued by the board or the governor charging a violation of release conditions, the sentence time credit may [shall] be suspended until a determination is made by the board or the governor in such case and such suspended time credit may be reinstated by

the board should such parole, mandatory supervision, or conditional pardon be continued.

(b) The Texas Board of Criminal Justice [board] shall develop and implement a training program for designees of the Board of Pardons and Paroles division [board] who conduct hearings under this section. The training program must assist the designees in understanding issues relating to the revocation process.

Sec. 15 [+6]. COMPLETION OF PAROLE PERIOD. (a) In order to complete the parole period, a parolee shall be required to serve out the whole term for which he was sentenced, subject to the deduction of the time he had served prior to his parole. The time on parole shall be calculated as calendar time. This provision, however, shall not be construed so as to interfere with the constitutional power conferred upon the governor to grant pardons and to commute sentences.

(b) The board may allow a person released on parole or mandatory supervision to serve the remainder of the person's sentence without supervision and without being required to report if:

(1) the person has been under the supervision for not less than one-half of the time that remained on the person's sentence when the person was released from imprisonment and during the period of supervision the person's parole or release on mandatory supervision has not been revoked; and

(2) the board determines that:

(A) the person has made a good faith effort to comply with any restitution order imposed on the person by a court of competent jurisdiction; and

(B) allowing the person to serve the remainder of the person's sentence without supervision and reporting is in the best interest of society.

(c) The board may require a person released from supervision and reporting under Subsection (b) of this section to resubmit to supervision and resume reporting at any time, and for any reason.

(d) This section may not be construed as interfering with the constitutional power of the governor to grant pardons and commute sentences.

Sec. 16 [+7]. REPORTS TO GOVERNOR. On request of the governor, the board shall investigate and report to the governor with respect to any person being considered by the governor for pardon, commutation of sentence, reprieve, remission of fine, or forfeiture and make recommendations thereon. The provisions of this article may not be construed as preventing or limiting the governor's exercise of powers vested in him by the constitution of this state.

Sec. 17 [+8]. SUPERVISION RESPONSIBILITIES. (a) The board [Board of Pardons and Paroles] shall have general responsibility for the investigation and supervision of all prisoners released on parole and to mandatory supervision. [For the discharge of this responsibility there is hereby created with the board a division of parole supervision. Subject to the general direction of the board, the division of parole supervision, including its field staff, shall be responsible for obtaining and assembling any facts the board may desire in considering parole eligibility, in establishing a mandatory supervision plan, and for investigating and supervising paroled prisoners and prisoners released to mandatory supervision to see that the conditions of parole and mandatory supervision are complied with and for making such periodic reports on the progress of parolees and prisoners released to mandatory supervision as the board may desire.]

(b) The Texas Board of Criminal Justice [board] shall collect information on recidivism of releasees under the supervision of the Board of Pardons and Paroles division [board] and use the information collected to evaluate [agency] operations.

Sec. 18 [+9]. CONFIDENTIAL INFORMATION. All information obtained in connection with inmates of the institutional division [Texas Department of Corrections] subject to parole, release to mandatory supervision, or

executive clemency, or individuals who may be on mandatory supervision or parole and under the supervision of the board ~~[division]~~, or persons directly identified in any proposed plan of release for a prisoner, including victim impact statements and inmates' arrest records, shall be confidential and privileged information and shall not be subject to public inspection; provided, however, that all such information shall be available to the governor and the board upon request. It is further provided that statistical and general information respecting the parole and mandatory supervision program and system, including the names of paroled prisoners, prisoners released to mandatory supervision, and data recorded in connection with parole and mandatory supervision services, shall be subject to public inspection at any reasonable time.

Sec. 19 ~~[20]~~. PAROLE OFFICERS. (a) It is expressly provided that no person may be employed as a parole officer or supervisor or be responsible for the investigation or supervision of persons on parole or mandatory supervision, unless he meets the following qualifications together with any other qualifications that may be specified by the ~~[executive]~~ director ~~[with the approval of the Board of Pardons and Paroles]~~: four years of successfully completed education in an accredited college or university and two years of full-time paid employment in responsible correctional work with adults or juveniles or in a related field. Additional experience in the above categories may be substituted year for year for the required college education, with a maximum substitution for two years.

(b) ~~[Sec. 21:]~~ Any parole officer or supervisor may, with the approval of the ~~[executive]~~ director, be designated as a probation officer by the judge of a court of the state having original jurisdiction of criminal actions. Any proportional part of the salary paid to a parole officer or supervisor so designated, however, in compensation for his service as a probation officer, shall be only with the prior written approval of the ~~[executive]~~ director, and all such proportional salary payments shall be periodically reported to the governor and the legislature by the director.

(c) ~~[Sec. 22:]~~ No person who is serving as a sheriff, deputy sheriff, constable, deputy constable, city policeman, Texas Ranger, state highway patrolman, or similar law enforcement officer or as a prosecuting attorney shall act as a parole officer or be responsible for the supervision of persons on parole or released to mandatory supervision.

(d) ~~[Sec. 23:]~~ Any parole officer or supervisor, upon request of the governor or order of the ~~[board and by direction of the executive]~~ director, shall be responsible for supervising persons placed on conditional pardon or furlough ~~[and persons transferred to preparole status under Article 6166x-4, Revised Statutes]~~.

Sec. 20 ~~[24]~~. INAPPLICABLE TO JUVENILES. The provisions of this article shall not apply to parole from institutions for juveniles ~~or~~:

~~[Sec. 25. The provisions of this article do not apply] to temporary furloughs granted to an inmate by the institutional division [Texas Department of Corrections] under Article 6184n, Revised Statutes.~~

Sec. 21 ~~[26]~~. LITERACY. The Texas Board of Criminal Justice ~~[Pardons and Paroles]~~ and the Central Education Agency shall adopt a memorandum of understanding that establishes the respective responsibilities of the board and the agency in implementing a continuing education program to increase the literacy of inmates released from the institutional division ~~[Texas Department of Corrections]~~ on parole and mandatory supervision. The Texas Board of Criminal Justice ~~[board]~~ and the agency shall coordinate the development of the memorandum of understanding and each by rule shall adopt the memorandum.

Sec. 22. CONTRACTS FOR SUPERVISION. ~~[27. (a)]~~ The division ~~[Board of Pardons and Paroles]~~ shall request proposals and shall ~~[may]~~ award contracts to departments ~~[district probation offices]~~ to provide parole services to persons

released to the supervision of the board. Not later than January 1, 1991, the board shall enter into contracts under this section that provide for the supervision of at least five percent of all persons who would otherwise be supervised by the board.

~~[The board may award a contract under this section if the board determines that:~~

~~[(1) the district probation office proposing to enter into the contract can provide qualified officers, types and levels of supervision, and a reporting system that are acceptable to the department; and~~

~~[(2) the services can be provided at a cost that is not less than 10 percent lower than the cost to the board of providing the same services.~~

~~[(b) A contract entered into under this section must contain:~~

~~[(1) a requirement that the district probation office provide qualified officers, types and levels of supervision, and a reporting system that are acceptable to the board; and~~

~~[(2) a provision authorizing the board to monitor the performance of the district probation office to determine if the office is in compliance with the contract.~~

~~[(c) The board shall specifically request the district probation office serving Tarrant County and the district probation office serving Potter County to enter into a contract under this section. If a district probation office submits a proposal under this subsection that is acceptable to the board under the standards, terms, and conditions of this section, the board shall award the office a contract with a duration of two years.]~~

Sec. 23 [28]. ELECTRONIC MONITORING. ~~[(a)]~~ In order to establish and maintain electronic monitoring programs as authorized by ~~[Section 8(g) of]~~ this article, the board ~~[Board of Pardons and Paroles]~~ may fund electronic monitoring programs in parole offices, develop standards for the operation of electronic monitoring programs in parole offices, and provide funds for the purchase, lease, or maintenance of electronic monitoring equipment ~~[serving counties with a population of 400,000 or more, as determined by the Criminal Justice Coordinating Council, on the basis of the best information available to the council.~~

~~[(b) If the board determines that programs funded under Subsection (a) of this section are of a sufficient quality and are cost effective, the commission may:~~

~~[(1) develop standards for the operation of electronic monitoring programs in parole offices throughout the state; and~~

~~[(2) provide funds for the purchase or lease and maintenance of electronic monitoring equipment.~~

~~[(c) The board shall seek funding for an electronic monitoring program on a priority basis].~~

Sec. 24 [29]. SPECIAL PROGRAMS. (a) The Texas Board of Criminal Justice, if funds are appropriated to the board for that purpose, ~~[Pardons and Paroles]~~ may enter into contracts for the provision of certain services to be provided to releasees under the supervision of the board, including the following:

(1) services to releasees who have a history of mental impairment ~~[health]~~ or mental retardation;

(2) services to releasees who have a history of substance abuse; or

(3) services to releasees who have a history of sexual offenses.

(b) If the Interagency Council on Mentally Retarded, Developmentally Disabled, and Mentally Ill Offenders authorizes a contract or grant under Chapter 1067, Acts of the 70th Legislature, Regular Session, 1987 (Article 4413(49a), Vernon's Texas Civil Statutes), the Texas Board of Criminal Justice shall approve the contract or grant. ~~[The board shall seek funding for the contracts from the legislature as a priority item.]~~

Sec. 25 [30]. INTENSIVE SUPERVISION. The board shall establish a program to provide intensive supervision to inmates released under the provisions

of Article 6184o, Revised Statutes, and other inmates determined by the board to require intensive supervision. The program must provide the highest level of supervision provided by the board. ~~[The program must also provide extensive case planning on the part of parole officers, a high frequency of contact between officers and parolees, and a caseload for officers of not more than 40 parolees.]~~

~~[Sec. 35. The Board of Pardons and Paroles and the Texas Department of Corrections are authorized to enter into interagency contracts for the placement of offenders in secure correctional facilities authorized by Article 6166g-2, Revised Statutes.]~~

Sec. 26. COMMUNITY-BASED FACILITIES. (a) The board may establish and operate or contract for the operation of community-based facilities to house, maintain, and provide services for:

(1) persons whose release on parole or mandatory supervision has been revoked by the board for technical violations of conditions of parole or mandatory supervision;

(2) persons required by the board as a condition of parole or mandatory supervision under Section 8(g) of this article to serve a period in a community-based facility; and

(3) persons whose release on parole or mandatory supervision has been continued or modified by the board under Section 14(a) of this article, and on whom the board has imposed sanctions under that section.

(b) The purpose of a facility authorized by this section is to provide housing, supervision, counseling, personal, social, and work adjustment training, and other programs for persons described by Subsection (a) of this section.

(c) The board may not establish or enter into a contract for a community-based facility under this section unless, not later than the 60th day before the date on which the board proposes to begin construction or award a contract, the board gives notice of that fact to the commissioners court of the county in which the proposed facility is to be located and to the governing body of any municipality within which the proposed facility is to be located.

(d) The board may not change the use of or significantly increase the capacity of a community-based facility unless the board provides notice of the change or increase and a hearing on the issues in the same manner required of the community justice assistance division under Section 10, Article 42.131 of this code before the division takes an action under Section 5 of that article.

(e) The board shall adopt rules necessary for the management of community-based facilities authorized by this section.

(f) The board may charge a reasonable fee to a person housed in a facility authorized by this section for the cost of housing, board, and that part of the administrative costs of the facility that may be properly allocable to the person. A fee imposed under this subsection may not exceed the actual costs to the board for services to the person charged for the services. The board may not deny placement in a community-based facility to a person because that person is unable to pay a fee authorized by this section.

(g) The board may grant a furlough to a person placed in a community-based facility so that the person may maintain or seek employment, an education, or housing after release from the facility.

(h) The board may enter into a contract with a public or private vendor to provide or supplement housing, board, or supervision for persons placed in community-based facilities. A person housed or supervised in a facility operated by a vendor under a contract is subject to the same provisions of law as if the housing or supervision were provided directly by the board.

(i) A person housed in a community-based facility who is described by Subsection (a)(1) of this section is considered to be in the actual physical custody

of the Texas Department of Corrections, is subject to the good conduct time provisions of Article 6181-1, Revised Statutes, and on release from the facility is entitled to receive a payment from the department under Section 28(b), Chapter 212, Acts of the 40th Legislature, Regular Session, 1927 (Article 6166z1, Vernon's Texas Civil Statutes).

SECTION 5.02. (a) The governor shall appoint six new members to the Board of Pardons and Paroles on or before January 1, 1990, and the terms of members serving on December 31, 1989, expire on that date. Of the new appointees, at least three must have been serving as members of the Board of Pardons and Paroles on September 1, 1989.

(b) Of the initial members of the new board, the governor shall appoint two to serve terms expiring on February 1, 1991, two to serve terms expiring on February 1, 1993, and two to serve terms expiring on February 1, 1995. On the expiration of the terms of the initial members of the new board, the term of a member appointed by the governor is six years.

(c) The powers, duties, and obligations of the members of the Board of Pardons and Paroles are disposed of as provided by Section 1.19 of this Act.

ARTICLE 6

SECTION 6.01. The Code of Criminal Procedure is amended by adding Chapter 60 to read as follows:

CHAPTER 60. CRIMINAL HISTORY RECORD SYSTEM

Art. 60.01. **DEFINITIONS.** In this chapter:

(1) "Arrest charge code" means a numeric code assigned to each offense category to be designated by the department.

(2) "Centralized criminal history record information system" means the enhanced computerized criminal history system managed by the council.

(3) "Computerized criminal history" means the data base containing arrest, disposition, and other criminal history maintained by the department.

(4) "Council" means the Criminal Justice Policy Council.

(5) "Disposition" means an action that results in the termination, transfer to another jurisdiction, or indeterminate suspension of the prosecution of a criminal charge.

(6) "Incident number" means a unique number assigned to a specific person during a specific arrest.

(7) "Release" means the termination of jurisdiction over an individual by the criminal justice system.

(8) "State identification number" means a unique number assigned by the department to each person whose name appears in the centralized criminal history record information system.

(9) "Uniform incident fingerprint card" means a multiple part form containing a unique incident number with space for information relating to the charge or charges for which a person is being arrested, the person's fingerprints, and other information relevant to the arrest.

Art. 60.02. **INFORMATION SYSTEMS.** (a) The Texas Department of Criminal Justice is responsible for recording data and establishing a data base for a centralized criminal history record information system. The council shall provide advice for the timely and effective implementation of this article.

(b) The Department of Public Safety is responsible, with cooperation from the council, for recording data and maintaining a data base for a computerized criminal history system that serves as the record creation point for criminal history information maintained by the state.

(c) The computerized criminal history system and the centralized criminal history record information system shall be established and maintained to supply the state with systems:

(1) that provide law enforcement officers with an accurate criminal history record depository;

(2) that provide criminal justice system agencies with an accurate criminal history record depository for operational decision making;

(3) from which accurate criminal justice system modeling can be conducted;

(4) that improve the quality of data used to conduct impact analyses of proposed legislative changes in the criminal justice system; and

(5) that improve the ability of interested parties to analyze the functioning of the criminal justice system.

(d) The data bases must contain the information required by this chapter.

(e) The Department of Public Safety has the sole responsibility for designating the state identification number for each person whose name appears in each data base.

(f) The Texas Department of Criminal Justice is responsible for the operation and maintenance of the centralized criminal history record information system. Data received by the Texas Department of Criminal Justice that is required by the department for the computerized criminal history record information system shall be reported to the Department of Public Safety not later than the seventh day after the date on which the Texas Department of Criminal Justice receives the data.

(g) The Department of Public Safety is responsible for the operation of the computerized criminal history system and shall develop the necessary interfaces in the system to accommodate inquiries from a statewide automated fingerprint information system, if such a system is implemented by the department.

(h) Whenever possible, the reporting of information relating to dispositions and subsequent offender processing data shall be conducted electronically.

(i) The Department of Public Safety and the Texas Department of Criminal Justice, with advice from the council, shall develop biennial plans to improve the reporting and accuracy of the computerized criminal history system and the centralized criminal history record information system and to develop and maintain monitoring systems capable of identifying missing information.

(j) At least once during each five-year period, the Texas Department of Criminal Justice, with advice from the council, shall examine the records and operations of the centralized criminal history record information system and of the computerized criminal history system to ensure the accuracy of information in the systems. The Texas Department of Criminal Justice may examine the public records of the agencies required to report information to the Department of Public Safety or council. The Texas Department of Criminal Justice shall submit to the legislature a report that summarizes the findings of each examination and contains recommendations for improving the systems.

Art. 60.03. INTERAGENCY COOPERATION; CONFIDENTIALITY. (a) Each agency listed in Article 60.02(a) of this code shall provide access to the agency's criminal history record information system to other criminal justice agencies, including the council. The access granted by this subsection does not grant an agency or the council the right to add, delete, or alter data maintained by another agency.

(b) Neither a criminal justice agency nor the council may disclose to the public information in an individual's criminal history record if the record is protected by state or federal law or regulation.

Art. 60.04. COMPATIBILITY OF DATA. (a) Data supplied to the computerized criminal history and the centralized criminal history record information systems must be compatible with the systems and must contain both incident numbers and state identification numbers.

(b) A discrete submission of information under any article of this chapter must contain, in conjunction with information required, the defendant's name and state identification number.

Art. 60.05. TYPES OF INFORMATION COLLECTED. (a) Together the computerized criminal history and the centralized criminal history record information systems must contain but are not limited to the following types of information for each arrest for a felony or a misdemeanor not punishable by fine only:

- (1) information relating to offenders;
- (2) information relating to arrests;
- (3) information relating to prosecutions;
- (4) information relating to the disposition of cases by courts;
- (5) information relating to sentencing; and
- (6) information relating to the handling of offenders received by a correctional agency, facility, or other institution.

(b) Information relating to an offender must include:

- (1) the offender's name, including other names by which the offender is known;
- (2) the offender's date of birth;
- (3) the offender's sex; and
- (4) the offender's state identification number.

(c) Information relating to an arrest must include:

- (1) the name of the offender and the offender's state identification number, if known;
- (2) the name of the arresting agency;
- (3) the arrest charge by name, arrest charge code, and incident number;
- (4) the level of the arrest charge or degree of offense charged;
- (5) the date of the arrest;
- (6) the exact disposition of the case by a law enforcement agency following the arrest; and
- (7) the date of disposition of the case by the law enforcement agency.

(d) Information relating to a prosecution must include:

- (1) each charged offense by name, arrest charge code, and incident number;
- (2) the level of the offense charged or the degree of the offense charged for each offense in Subdivision (1) of this subsection; and
- (3) if the case was disposed of by the prosecutor, the nature and date of the disposition and each charged offense disposed of, by name, arrest charge code, and incident number.

(e) Information relating to the disposition of a case must include:

- (1) the final pleading to each charged offense and the level of the offense;
- (2) a listing of charged offenses disposed of by the court and:
 - (A) the date of disposition; and
 - (B) a listing of each offense and the arrest charge code, name, and incident number;

- (3) a listing of offenses for which the defendant was convicted by the arrest charge code, name, and incident number; and
- (4) the date of conviction.

(f) Information relating to sentencing must include for each sentence:

- (1) the sentencing date;
- (2) the sentence for each offense by name, arrest charge code, and incident number;

- (3) if the defendant was sentenced to imprisonment:
 - (A) the place of imprisonment;
 - (B) the length of sentence for each offense; and
 - (C) if multiple sentences were ordered, whether they were ordered to be served consecutively or concurrently;
- (4) if the defendant was sentenced to a fine, the amount of the fine;
- (5) if a sentence other than fine or imprisonment was ordered, a description of the sentence ordered;
- (6) if court costs were ordered and if so the amount of the costs; and
- (7) if fees, costs, and similar monetary penalties other than those described by Subdivisions (4) and (6) of this subsection were ordered, the amount for each.
- (g) Sentencing information must also include the following information about each probation or other alternative to confinement ordered:
 - (1) each conviction for which sentence was ordered but was probated, suspended, or otherwise not imposed, by name, arrest charge code, and incident number;
 - (2) whether a portion of a fine or other cost was probated or otherwise not imposed and if so:
 - (A) for each offense, the amount of the fine that was not imposed; and
 - (B) for each offense, the amount of the court costs or other costs or fees that was not imposed; and
 - (3) if a sentence or portion of a sentence of imprisonment was not imposed:
 - (A) the offense, the sentence, and the amount of the sentence not imposed; and
 - (B) a statement of whether a return to confinement or other imprisonment was a condition of probation or an alternative sentence.
- (h) Information relating to the handling of offenders must include the following information about each institutionalization, confinement, or execution of an offender:
 - (1) the date of the institutionalization or confinement;
 - (2) if the defendant was sentenced to death:
 - (A) the scheduled date of execution;
 - (B) if the defendant was executed, the date of execution;
- and
 - (C) if the death sentence was commuted, the sentence to which the sentence of death was commuted and the date of commutation;
 - (3) the date the defendant was released from institutionalization or confinement and whether the release was a discharge or a release on parole or mandatory supervision; and
 - (4) if the offender is released on parole or mandatory supervision:
 - (A) the offense for which the offender was convicted by name, arrest charge code, and incident number;
 - (B) the latest possible expiration date of the sentence;
- and
 - (C) the earliest possible expiration date of the sentence.
- (i) Data elements not needed for the functioning of the computerized criminal history system shall be maintained in the centralized criminal history record information system.

Art. 60.06. DUTIES OF AGENCIES. (a) Each criminal justice agency shall:

- (1) compile and maintain records needed for reporting data required by the Texas Department of Criminal Justice and the Department of Public Safety;

(2) transmit to the Texas Department of Criminal Justice and the Department of Public Safety, when and in the manner the Texas Department of Criminal Justice and the Department of Public Safety direct, all data required by the Texas Department of Criminal Justice and the Department of Public Safety, other than reports concerning the identity of a juvenile offender or the offender's parents;

(3) give the Texas Department of Criminal Justice or its accredited agent access to the agency for the purpose of inspection to determine the completeness and accuracy of data reported; and

(4) cooperate with the Department of Public Safety and the Texas Department of Criminal Justice so that the Department of Public Safety and the Texas Department of Criminal Justice may properly perform their duties under this chapter.

(b) Information on an individual that consists of an identifiable description and notation of an arrest, detention, indictment, information, or other formal criminal charge and a disposition of the charge, including sentencing, correctional supervision, and release that is collected and compiled by the Department of Public Safety and the Texas Department of Criminal Justice from criminal justice agencies and maintained in a central location is not subject to public disclosure except as authorized by federal or state law or regulation.

(c) Subsection (b) of this section does not apply to a document maintained by a criminal justice agency that is the source of information collected by the Texas Department of Criminal Justice. Each criminal justice agency shall retain documents described by this subsection.

(d) An official of an agency may not intentionally conceal or destroy any record with intent to violate this section.

(e) The duties imposed on a criminal justice agency under this article are also imposed on district court and county court clerks.

Art. 60.07. UNIFORM INCIDENT FINGERPRINT CARD. (a) The Department of Public Safety, in consultation with the council, shall design, print, and distribute to each law enforcement agency in the state a uniform incident fingerprint card.

(b) The incident card must:

(1) be serially numbered with an incident number in such a manner that the individual incident of arrest may be readily ascertained; and

(2) be a multiple part form that can be transmitted with the offender through the criminal justice process and that allows each agency to report required data to the department or the council.

Art. 60.08. REPORTING. (a) The Texas Department of Criminal Justice shall, by rule, develop reporting procedures that ensure that the offender processing data is reported from the time a defendant is convicted until the time a defendant is released.

(b) The arresting agency shall prepare a uniform incident fingerprint card and initiate the reporting process when an individual is arrested for a felony or a misdemeanor not punishable by fine only.

(c) The clerk of the court exercising jurisdiction over a case shall report the disposition of the case to the council.

(d) Information or data required by this chapter to be reported to the Texas Department of Criminal Justice or the Department of Public Safety shall be reported promptly but not later than the 30th day after the date on which the information or data is received by the individual responsible for reporting it except in the case of an arrest. An arrest shall be reported to the Texas Department of Criminal Justice or the Department of Public Safety not later than the seventh day after the date of the arrest.

Art. 60.09. LOCAL DATA ADVISORY BOARDS. (a) The commissioners court of each county may create local data advisory boards to, among other duties:

(1) analyze the structure of local automated and manual data systems to identify redundant data entry and data storage;

(2) develop recommendations for the commissioners to improve the local data systems;

(3) develop recommendations, when appropriate, for the effective electronic transfer of required data from local agencies to state agencies; and

(4) any related duties to be determined by the commissioners court.

(b) Local officials responsible for collecting, storing, reporting, and using data may be appointed to the local data advisory board.

(c) The council and the Department of Public Safety shall, to the extent that resources allow, provide technical assistance and advice on the request of the local data advisory board.

ARTICLE 7

SECTION 7.01. Section 3, Chapter 696, Acts of the 70th Legislature, Regular Session, 1987 (Article 601d-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. TEXAS DEPARTMENT OF CORRECTIONS MASTER PLAN. Proceeds of bonds issued under this Act may not be distributed to the Texas Department of Corrections or otherwise used to finance a project of that department unless the department has submitted to the review board a master plan for construction of corrections facilities. The plan must be in the form, contain the information, and cover the period prescribed by the review board, but in any event must be revised annually.

SECTION 7.02. Section 4(a), Chapter 696, Acts of the 70th Legislature, Regular Session, 1987 (Article 601d-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(a)(1) The authority may issue up to \$500 million in general obligation bonds and distribute bond proceeds to appropriate agencies for use for acquiring, constructing, or equipping new facilities or for major repair or renovation of existing facilities, corrections institutions, including youth corrections institutions, and mental health and mental retardation institutions.

(2) The authority may issue up to \$200 million in general obligation bonds, in addition to the amount authorized by Subsection (a)(1) of this section, and distribute bond proceeds to the Texas Department of Corrections for use in acquiring, constructing, or equipping new corrections institutions.

(3) The bond proceeds may be used to refinance an existing obligation for a purpose described by this subsection. The authority may issue general obligation bonds to refund revenue bonds issued under this Act.

SECTION 7.03. Section 6, Chapter 696, Acts of the 70th Legislature, Regular Session, 1987 (Article 601d-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. AMOUNT OF OUTSTANDING BONDS. At any one time, the combined amount of outstanding revenue bonds and outstanding general obligation bonds issued under this Act may not exceed \$700 [~~\$500~~] million.

ARTICLE 8

SECTION 8.01. (a) Except as provided by Subsections (b) and (c) of this section, this Act takes effect September 1, 1989.

(b) Sections 7.02 and 7.03 of this Act take effect on the date on which the constitutional amendment proposed by ____J.R. ____, 71st Legislature, Regular Session, 1989, takes effect. If that amendment is not approved by the voters, those sections have no effect.

(c) The following provisions have immediate effect:

(1) Section 8(a) and Section 13, Article 42.18, Code of Criminal Procedure, as amended by Section 5.01 of this Act;

(2) Chapter 493, Acts of the 61st Legislature, Regular Session, 1969 (Article 6166x-3, Vernon's Texas Civil Statutes), as amended by Section 4.17 of this Act;

(3) Section 4, Article 42.03, Code of Criminal Procedure, as amended by Section 4.06 of this Act; and

(4) Section 3(c), Article 6181-1, Revised Statutes, as amended by Section 4.18 of this Act.

SECTION 8.02. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The amendment was read.

Senator McFarland offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 2

Amend the floor substitute to C.S.H.B. 2335 as follows:

(1) In Section 1.09 of the bill, add a Subsection (h) to read as follows:

(h) The board may apply for and accept gifts or grants from any public or private source for use in maintaining and improving correctional programs and services.

(2) In Section 3.01 of the bill, strike Subdivision (1) of Section 1(a), Article 42.13, Code of Criminal Procedure, and substitute a new Subdivision (1) of that subsection to read as follows:

(1) allow localities to increase their involvement and responsibility in developing sentencing programs that provide effective sanctions for felony offenders;

(3) In Section 3.01 of the bill, in Section 6 of Article 42.13 add Subsection (d) to read as follows:

(d) A community justice plan submitted under this section must include, in addition to the information required by Subsection (b) of this section, any other information required by the division.

(4) In Section 3.02 of the bill, in Section 3, Article 42.131, Code of Criminal Procedure, add Subsection (e) to read as follows:

(e) Departments are specifically encouraged to purchase or enter into contracts for the use of abandoned or underutilized public facilities, such as rural hospitals, for the purpose of using those facilities as substance abuse treatment facilities. The division may make grants to departments that use abandoned or underutilized facilities described by this subsection.

(5) In Section 3.02 of the bill, in the first sentence of Section 3(b) (page 29, line 19), between "established" and the comma insert "by the district judge or judges".

(6) Strike Subsection (a), Article 6166a-4, Revised Statutes, as added by Section 3.04 of the bill, and substitute a new Subsection (a) of that article to read as follows:

(a) The Texas Board of Criminal Justice shall develop, adopt, and enforce an allocation formula that fairly and equitably allocates to each county or group of counties served by a community corrections and supervision department

the number of institutional division admissions allocated to the county or counties until sufficient capacity is available in the institutional division. In devising the formula, the board shall consider relevant factors for each county or group of counties served by a department and shall assign weights to those factors as determined appropriate by the board. The factors shall include but are not limited to:

- (1) the percentage of prison admissions for the entire state that were used by the county or counties in the preceding 12 months;
- (2) the percentage of the state's violent index crime that occurred in the county or counties in the preceding 12 months;
- (3) the percentage of the state's total index crime that occurred in the county or counties in the preceding 12 months;
- (4) the percentage of the state's total arrests under the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes) that occurred in the county or counties in the preceding 12 months;
- (5) the percentage of the state's population residing in the county or counties; and
- (6) the percentage of the state's total unemployment in the county or counties.

(7) Strike Sec. 3.05 and substitute the following:

SECTION 3.05. Section 3, The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. DEFINITIONS. As used in this Act:

(1) "local government" means a county; a home rule city or a city, village, or town organized under the general laws of this state; a special district; a school district; a junior college district; any other legally constituted political subdivision of the State of Texas or any adjoining state; or a combination of political subdivisions. A community supervision and corrections department established under Section 2, Article 42.131, Code of Criminal Procedure, may be a party to an agreement under this Act.

(2) "governmental functions and services" means all or part of any function or service included within the following general areas: police protection and detention services; fire protection; streets, roads, and drainage; public health and welfare; parks; recreation; library services; museum services; waste disposal; planning; engineering; administrative functions; and such other governmental functions which are of mutual concern to the contracting parties.

(3) "administrative functions" means functions normally associated with the routine operation of government such as tax assessment and collection, personnel services, purchasing, data processing, warehousing, equipment repair, and printing.

(8) In Section 4.17 of the bill, in Section 10 of Article 42.12, Code of Criminal Procedure, (page 74 between line 12-13) add a Subsection (f) to read as follows:

(f) If a probation officer or magistrate modifies the conditions of probation under Subsection (e) of this article, the officer or magistrate shall file a copy of the modified conditions with the sentencing court.

(9) In Section 5.01 of the bill, strike the last sentence of Section 6(a) of Article 42.18, Code of Criminal Procedure (page 152, lines 7-9) and substitute:

"The governor shall designate one member as the chairman of the board, and the chairman serves in that capacity at the pleasure of the governor."

"[The governor shall biennially designate one member to serve as chairman and one member to serve as a vice-chairman:]".

(10) In Section 5.01 of the bill, in the second sentence of Section 7(h), (page 155, lines 5-6) strike “director [board]” and substitute “chairman of the board”.

(11) In Section 5.01 of the bill, in Section 26 of Article 42.18, Code of Criminal Procedure, (page 188, lines 6-7), add a Subsection (j) to read as follows:

“(j) Subsections (c) and (d) of this section apply to pre-parole transfer facilities, half-way house facilities, and quarter houses.”

The amendment was read and was adopted viva voce vote.

Senator Caperton offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 3

Amend the floor substitute to C.S.H.B. 2335 as follows:

(1) Amend Subsection (a) of Section 1.10 to read as follows:

(a) The board shall employ an executive director who possesses the following minimum qualifications:

(1) five years’ experience in the field of corrections in an administrative capacity; or

(2) three years’ experience in the field of corrections in an administrative capacity and a graduate degree from an accredited institution of higher education in penology or a related field; or

(3) seven years’ experience in management or administration of a government agency, institution of higher education, nonprofit organization, or business enterprise of comparable size to the Department of Criminal Justice.

The amendment was read and was adopted viva voce vote.

Senator Caperton offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 4

Amend the floor substitute to C.S.H.B. 2335 as follows:

(1) Add a new Section 2.04 to Article 2 to read as follows:

SECTION 2.04. Subsection (b), Section 413.017, Government Code, is amended to read as follows:

(b) The executive director is appointed by the governor with the advice and consent of the senate. The executive director may not work for any agency or office of the state other than the policy council and may not perform duties for any other state agency or office that negatively affect the performance of his duties as executive director of the policy council.

(2) Renumber current Section 2.04 as Section 2.05.

The amendment was read and was adopted viva voce vote.

Senator Ratliff offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 5

(1) Amend the floor substitute for C.S.H.B. 2335, Section 24, Article 42.12, Code of Criminal Procedure, line 13, page 106, by inserting the words “with or” between the words “defendant” and “without”.

The amendment was read and was adopted viva voce vote.

Senator Brooks offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 6

Amend C.S.H.B. 2335 by adding an appropriately numbered article with appropriately numbered sections as follows:

ARTICLE _____

SECTION ____ Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.141 to read as follows:

ARTICLE 42.141. BATTERING INTERVENTION AND PREVENTION PROGRAM

Sec. 1. DEFINITIONS. In this subchapter:

(1) "Batterer" means a person who commits repeated acts of violence or who repeatedly threatens violence against another who is:

(A) related to the actor by affinity or consanguinity;

(B) is a former spouse of the actor; or

(C) resides or has resided in the same household with the actor.

(2) "Battering intervention and prevention program" means a program operated by a nonprofit organization that provides treatment and educational services designed to help batterers stop their abusive behavior, and which provide services:

(A) on a local basis; and

(B) for batterers referred by the courts for treatment.

(3) "Commission" means the Texas Adult Probation Commission.

(4) "Family" has the meaning assigned by Section 71.01, Family Code.

(5) "Family violence" has the meaning assigned by Section 71.01, Family Code.

(6) "Family violence shelter center" has the meaning assigned by Section 51.002, Human Resources Code.

(7) "Household" has the meaning assigned by Section 71.01, Family Code.

(8) "Program" means a battering intervention and prevention program as defined in Section 1 (2) of this Act.

(9) "Project" means the statewide activities for the funding of battering intervention and prevention programs, related community educational campaign, and educational and research regarding such programs.

(10) "Responsive law enforcement climate" means an area where, in cases of family violence:

(A) the local law enforcement agency has a policy or record of arresting batterers; and

(B) the local criminal justice system:

(i) cooperates with the victim in filing protective orders; and

(ii) takes appropriate action against a person who violates protective orders.

Sec. 2. ESTABLISHMENT. The battering intervention and prevention program is established in the Texas Adult Probation Commission.

Sec. 3. DUTIES OF THE COMMISSION. The commission shall:

(a) contract with a nonprofit corporation for statewide activities and coordination which must have been involved in providing statewide advocacy and technical assistance relating to family violence to shelter centers, law enforcement agencies, and legal communities to perform the duties described in Subsection (c) of this section for not less than five years immediately before the date on which the contract with the commission is signed;

(b) seek the input of the statewide nonprofit organization described in Subsection (a) of this section in the development of standards for selection of programs and the review of proposals submitted by programs;

(c) issue requests for proposals for the programs and the educational campaign not later than January 1, 1990;

(d) award contracts for programs which take into consideration:

(1) a balanced geographical distribution of urban, rural, and suburban models; and

(2) the presence of a responsive law enforcement climate in the community;

(e) develop and monitor the project in cooperation with the nonprofit organization;

(f) monitor the development of a community educational campaign in cooperation with the nonprofit organization;

(g) assist the nonprofit organization in designing program evaluations and research activities; and

(h) facilitate training of probation officers and other criminal justice professionals by the nonprofit organization and by programs.

Sec. 4. DUTIES OF THE NONPROFIT ORGANIZATION. The nonprofit organization shall:

(a) assist the commission with developing and issuing requests for proposals for the programs and the educational campaign;

(b) assist the commission with reviewing the submitted proposals and making recommendations for proposals to be selected for funding;

(c) develop and monitor the project in cooperation with the commission;

(d) provide technical assistance to programs to:

(1) develop appropriate services for batterers;

(2) train staff;

(3) improve coordination with family violence shelter centers, the criminal justice system, the judiciary, law enforcement agencies, prosecutors, and other appropriate officials and support services;

(4) implement the community educational campaign; and

(5) participate in project administered program evaluation and research activities;

(e) provide technical assistance to the commission to:

(1) develop and implement standards for selection of programs for inclusion in the project; and

(2) develop standards for selection of the community educational campaign described in Section 6 of this Act;

(f) submit an annual written report to the commission and to the legislature with recommendations for continuation, elimination, or changes in the project; and

(g) evaluate the programs and the community educational campaign, including an analysis of the effectiveness of the project and the level of public awareness relating to family violence.

Sec. 5. PROGRAMS. (a) A program proposal must:

(1) describe the counseling or treatment the program will offer;

(2) include letters from local law enforcement agency or agencies, courts, probation officers, and other community resources describing the community's commitment to improve the criminal justice system's response to victims and batterers and to cooperate with and interact in the programs' activities;

(3) include a letter from the local family violence shelter center describing the support services available to victims of family violence in the community and the shelter's commitment to cooperate and work with the program; and

(4) describe the public education and local community outreach activities relating to family violence currently available in the community and a statement of commitment to participate on the local level in the public education campaign described in Section 6 of this subchapter.

(b) A program must:

(1) be situated in a county in which a family violence shelter center is located;

(2) offer counseling or treatment in which the primary approach is direct intervention with the batterer, on an individual or group basis, but that does not require the victim of the family violence to participate in the counseling or treatment;

(4) offer training to law enforcement prosecutors, judges, probation officers, and others on the dynamics of family violence, treatment options, and program activities; and

(5) have a system for receiving referrals from the courts and for reporting to the court regarding batterers' compliance with the treatment program.

(c) Nothing herein precludes a program from serving batterers other than those who were ordered by a court to participate in the program established under this subchapter.

Sec. 6. COMMUNITY EDUCATIONAL CAMPAIGN. (a) The commission, with assistance from the nonprofit, shall select the community educational campaign relating to family violence after the commission has selected the programs. The campaign is to be implemented in the areas covered by the programs.

(b) The campaign shall use a variety of media, including newspapers, radio, television, and billboards, and shall focus on:

(1) the criminality of acts of violence toward family members;

(2) the consequences of family violence crimes to the batterer; and

(3) eradicating public misconceptions of family violence.

Sec. 7. LEGISLATIVE APPROPRIATION. (a) Not more than 6% of the legislative appropriation for the project established under this subchapter may be used by the commission for management and administration of the project.

(b) Not more than 14% of the legislative appropriation shall be applied to the contract between the commission and the nonprofit organization.

(c) Not more than 3% of the legislative appropriation shall be applied to the contract for the community educational campaign.

SECTION _____. (a) This article takes effect September 1, 1989.

(b) The contract described in Section 3(a) of this Article shall be signed no later than November 1, 1989.

The amendment was read and was adopted viva voce vote.

Senator Washington offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 7

Amend the Floor substitute (Amend. No. _____) to C.S.H.B. 2335 as follows:

(1) On page 31, line 6, change the "may" to "shall".

(2) On page 31, line 9, strike "should" and replace with "shall".

The amendment was read and was adopted viva voce vote.

Senator Edwards offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 8

Amend C.S.H.B. 2335 as amended by striking Section 4.20(e) and substituting the following:

(e) The Texas Department of Corrections shall make available as established under Section 8(e), Article 42.18, Code of Criminal Procedure, to inmates who are deemed appropriate and eligible candidates by the Department for participation, a substance abuse treatment program which will encompass recognition and awareness of the disease concept of addiction. The Department may use suitable inmates as tutors as classified by the Department, but must ensure that the inmate tutors do not exercise any authority over other inmates. The Department shall provide educational materials designed to assist the inmate in understanding the inmate's alcohol or drug dependency problem.

The amendment was read and was adopted viva voce vote.

Senator Glasgow offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 9

Amend the floor substitute to C.S.H.B. 2335 by adding an appropriately numbered section to Article 5 of the bill to read as follows:

SECTION _____. Article 42.18, Code of Criminal Procedure, is amended by adding Section 19A to read as follows:

Sec. 19A. (a) Not later than September 1, 1990, the director shall establish qualifications for parole officers and supervisors that are the same as the qualifications for probation officers imposed by Section 5, Article 42.131 of this code.

(b) A person may not begin employment as a parole officer after September 1, 1990, unless the person meets the qualifications established by the director under Subsection (a) of this section.

(c) A person employed as a parole officer or supervisor before or on September 1, 1990, is subject to the qualifications established under Section 19 of this article, and is not subject to this section.

The amendment was read and was adopted viva voce vote.

Senator Washington offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 10

Amend C.S.H.B. 2335 as follows:

On page 134, between lines 22 and 23, insert the following:

(6) In determining which inmates may be promoted within the program, the Board shall consider:

- (1) the level of job performance achieved by the inmate;
- (2) the willingness of the inmate to take instruction or training related to the task to which he is assigned;
- (3) the inmate's work attendance record; and
- (4) the inmate's disciplinary record.

The amendment was read and was adopted viva voce vote.

Senator Washington offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 11

Amend C.S.H.B. 2335 as follows:

On page 141, strike the word "and", and between lines 18 and 19, insert the following:

and;

(C) Developing a skills enhancement program for parolees in cooperation with other governmental, educational and private entities, using any available public and/or private financial resources available and authorized by statute.

The amendment was read and was adopted viva voce vote.

Question recurring on the adoption of Floor Amendment No. 1 as amended, the amendment was adopted viva voce vote.

On motion of Senator McFarland and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2335 ON THIRD READING**

Senator McFarland moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that C.S.H.B. 2335 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
SENATE BILL 136 ON SECOND READING**

On motion of Senator Parker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 136, Relating to limitation of liability for persons operating a medical emergency vehicle while responding to a medical emergency for a volunteer fire department.

The bill was read second time and was passed to engrossment viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 136 ON THIRD READING**

Senator Parker moved that the Constitutional Rule and Senate Rule 7.19 requiring bills to be read on three several days be suspended and that C.S.S.B. 136 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Washington.

The bill was read third time and was passed viva voce vote.

CONFERENCE COMMITTEE ON HOUSE BILL 563

Senator Barrientos called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 563** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 563** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Barrientos, Chairman; Whitmire, Carriker, Tejada and Washington.

CONFERENCE COMMITTEE ON HOUSE BILL 248

Senator Parker called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 248** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 248** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Parker, Chairman; Montford, Armbrister, Caperton and Green.

CONFERENCE COMMITTEE ON HOUSE BILL 340

Senator Haley called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 340** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 340** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Haley, Chairman; Barrientos, McFarland, Harris and Sims.

SENATE BILL 479 WITH HOUSE AMENDMENTS

Senator Barrientos called **S.B. 479** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.
Committee Amendment - Eckels, et al.

Amend **S.B. 479** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 1.02, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.02. PURPOSES. The general purposes of this Act are:

(1) to provide for the execution of the policies embodied in Title VII of the federal Civil Rights Act of 1964, as amended (42 U.S.C. Section 2000e et seq.), and to create an authority that meets the criteria under 42 U.S.C. Section 2000e-5(c) and 29 U.S.C. Section 633; and

(2) to secure for persons within the state, including disabled persons, freedom from discrimination in certain transactions concerning employment, and thereby to protect the [their interest in] personal dignity of persons within the state; and to make available to the state the [their] full productive capacities of those persons, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of persons [individuals] within the state.

SECTION 2. Sections 1.04(a) and (b), Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Except as provided by Section 5.04 of this Act, in [fn] this Act, "because of age" or "on the basis of age" refers only to discrimination because of age or on the basis of age against an individual 40 years of age or older [and under 70 years of age]. Nothing in this Act prohibits the compulsory retirement of any employee who has attained 65 years of age [but not 70 years of age], and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policy-making position, if the employee is entitled to an immediate, nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of plans, of the employer of the employee, that equals, in the aggregate, at least \$27,000.

(b) In Article 5, "because of disability [handicap]" or "on the basis of disability [handicap]" refers to discrimination solely because of or on the basis of a physical or mental condition that does not impair an individual's ability to reasonably perform a job that the individual is otherwise qualified to perform.

SECTION 3. Section 2.01, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.01. DEFINITIONS. In this Act, unless the context otherwise requires:

(1) "Bona fide occupational qualification" means a qualification:

(A) that is reasonably related to the satisfactory performance of the duties of a job; and

(B) for which there is a factual basis for believing that a person of the excluded group would be unable to perform satisfactorily the duties of the job with safety or efficiency.

(2) "Commission" means the Commission on Human Rights created by this Act.

(3) "Commissioner" means a member of the commission.

(4) "Disability" means a mental or physical impairment that substantially limits at least one major life activity, and a record of such a mental or physical impairment. The term does not include:

(A) a condition of addiction to any drug or illegal or federally controlled substance or a condition of addiction to the use of alcohol; or

(B) a communicable disease or infection that constitutes a direct threat to the health or safety of other persons or that makes the affected person unable to perform the duties of the person's employment.

(5) "Disabled" means having a disability.

(6) "Employee" means an individual employed by an employer, including an individual subject to the civil service laws of the state or a political subdivision of the state, except that the term "employee" does not include an individual elected by the qualified voters to public office in the state or a political subdivision of the state, an individual chosen by that officer to be on the officer's

personal staff, an appointee on the policy-making level, or an immediate adviser with respect to the exercise of the constitutional or legal powers of public office.

(7) [(5)] “Employer” means:

(A) a person, including a school district or a special-purpose district or authority of this state, engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year and any agent of that person; or

(B) [~~The term includes~~] a county or municipality [~~political subdivision~~] or [~~and~~] any state agency or instrumentality, including public institutions of higher education, regardless of the number of individuals employed.

(8) [(6)] “Employment agency” means a person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, including an agent of that person.

[(7)(A)] “Handicapped person” means a person who has a mental or physical handicap, including mental retardation, hardness of hearing, deafness, speech impairment, visual handicap, being crippled, or any other health impairment that requires special ambulatory devices or services, as defined in Section 121.002(4), Human Resources Code, but does not include a person because he is addicted to any drug or illegal or federally controlled substances or because he is addicted to the use of alcohol:

[(B)] “Handicap” means a condition either mental or physical that includes mental retardation, hardness of hearing, deafness, speech impairment, visual handicap, being crippled, or any other health impairment that requires special ambulatory devices or services, as defined in Section 121.002(4); Human Resources Code, but does not include a condition of addiction to any drug or illegal or federally controlled substances or a condition of addiction to the use of alcohol:]

(9) [(8)] “Labor Organization” means a labor organization engaged in an industry affecting commerce, and includes:

(A) any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment;

(B) any conference, general committee, joint or system board, or joint council so engaged that is subordinate to a national or international labor organization; and

(C) an agent of a labor organization.

(10) [(9)] “Local commission” means a commission on human relations created by one or more political subdivisions.

(11) [(10)] “National origin” includes the national origin of an ancestor.

(12) [(11)] “Person” means one or more individuals or an association, corporation, joint-stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee, trustee in bankruptcy, unincorporated organization, the state, or a political subdivision or agency of the state.

(13) [(12)] “Political subdivision” means a county or municipality [~~an incorporated city or town~~].

(14) [(13)] “Religion” means all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable reasonably to accommodate the religious observance or practice of an employee or applicant without undue hardship on the conduct of the employer’s business.

SECTION 4. Section 3.01, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and by adding Subsections (e) and (f) to read as follows:

(a) There is created the Commission on Human Rights to consist of six members. The governor shall appoint the commissioners with the advice and consent of the senate and designate one of the commissioners as chairman of the commission. One member of the commission shall be a representative of industry, one member shall be a representative of labor, and four members shall be representatives of the general public ~~[appointed at large]~~. In making appointments, the governor shall strive to achieve representation on the commission that is diverse with respect to disability, religion, age, economic status, sex, race, and ethnicity.

(e) A person is not eligible for appointment as a public member of the commission if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds from the commission;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the commission; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

(f) A person may not serve as a member of the commission or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

SECTION 5. The Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes) is amended by adding Section 3.011 to read as follows:

Sec. 3.011. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal from the commission if a member:

(1) does not have at the time of appointment the qualifications required by Section 3.01(a) or (e) of this Act;

(2) does not maintain during service on the commission the qualifications required by Section 3.01(a) or (e) of this Act;

(3) violates a prohibition established by Section 3.01(f) of this Act;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent for more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the chairman of the commission of the ground. The chairman shall then notify the governor that a potential ground for removal exists.

SECTION 6. Section 3.02, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.02. POWERS OF COMMISSION. (a) The commission has the following powers:

(1) to maintain an office in the city of Austin;

(2) to meet and exercise its powers at any place within the state; ~~except in any political subdivision having a local commission as described in Section 4.02 of this Act];~~

(3) to employ an executive director and authorize the employment of other staff members, including any necessary attorneys or clerks and other representatives or agents, and to fix the compensation of the executive director or other staff members, representatives, or agents;

(4) to promote the creation of local commissions on human rights and to cooperate or contract with individuals or state, local, or other agencies, both public and private, including agencies of the federal government and of other states;

(5) to accept public grants or private gifts, bequests, or other payments;

(6) to receive, investigate, seek to conciliate, and pass on complaints alleging violations of this Act, and file civil actions to effectuate the purposes of this Act;

(7) to request and, if necessary, compel by subpoena the attendance of necessary witnesses for examination under oath or affirmation, and the production, for inspection and copying, of records, documents, and other evidence relevant to the investigation of alleged violations of this Act. The commission by rule may authorize a commissioner or one of its staff to exercise the powers stated in this subdivision on behalf of the commission;

(8) to furnish technical assistance requested by a person subject to this Act to further compliance with the Act or with rules or orders issued under this Act;

(9) to render at least annually a comprehensive written report to the governor and to the legislature, which report may contain recommendations of the commission for legislative or other action to carry out the purposes and policies of this Act; and

(10) to adopt, issue, amend, and rescind procedural rules to carry out the purposes and policies of this Act.

(b) The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

(c) The commission shall prepare and maintain a written plan that describes how a disabled person or a person who does not speak English can be provided reasonable access to the commission's programs.

(d) The commission shall develop on a biennial basis an inventory of equal employment opportunity policies and programs adopted and implemented by the various state agencies. The commission shall conduct studies of the policies and programs of selected state agencies if directed to do so by a resolution of the legislature or by an executive order of the governor.

SECTION 7. Section 3.03, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.03. SUNSET PROVISION. The Commission on Human Rights is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the commission is abolished September 1, 2001 [1989].

SECTION 8. The Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes) is amended by adding Sections 3.04 and 3.05 to read as follows:

Sec. 3.04. PERSONNEL. (a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program shall require intra-agency posting of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for commission employees must be based on the system established under this subsection.

(c) The commission shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(d) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies related to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the commission work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the commission work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(e) A policy statement prepared under Subsection (d) must cover an annual period, be updated not less than annually, and be filed with the governor's office.

(f) The governor's office shall develop a biennial report to the legislature based on the information received under Subsection (e). The report may be made separately or as a part of other biennial reports made to the legislature.

(g) The commission shall develop and implement policies that clearly define the respective responsibilities of the commission and the staff of the commission.

Sec. 3.05. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The commission shall prepare information of public interest describing the functions of the commission and the commission's procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the public and appropriate state agencies.

(b) If a written complaint is filed with the commission that the commission has authority to resolve, the commission, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission.

SECTION 9. Section 4.02, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.02. LOCAL COMMISSIONS. A political subdivision or two or more political subdivisions acting jointly may create a local commission to promote the purposes of this Act and to secure for all individuals within the jurisdiction of the political subdivision or subdivisions freedom from discrimination because of race, color, disability [handicap], religion, sex, national origin, or age and may appropriate funds for the expenses of the local commission.

SECTION 10. Section 4.04(a), Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The state commission shall refer a complaint filed with it to a local commission with the necessary investigatory and conciliatory powers if the complaint concerns discrimination in employment because of race, color, disability [handicap], religion, sex, national origin, or age, and:

(1) the complaint has been referred to the state commission by the federal government; or

(2) the jurisdiction over the subject matter of the complaint has been deferred to the state commission by the federal government.

SECTION 11. Section 5.01, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.01. EMPLOYERS. (a) It is an unlawful employment practice for an employer:

(1) to fail or refuse to hire or to discharge an individual or otherwise to discriminate against an individual with respect to compensation or the terms, conditions, or privileges of employment because of race, color, disability [~~handicap~~], religion, sex, national origin, or age; or

(2) to limit, segregate, or classify an employee or applicant for employment in a way that would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the status of an employee because of race, color, disability [~~handicap~~], religion, sex, national origin, or age.

(b) Subsection (a) of this section as it prohibits unlawful employment practices based on disability does not apply to a private employer unless that employer has a contract with the state or a political subdivision of the state in an amount greater than \$2,500 for the procurement of personal property or nonpersonal services, including construction.

SECTION 12. Section 5.02, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.02. EMPLOYMENT AGENCIES. It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against an individual because of race, color, disability [~~handicap~~], religion, sex, national origin, or age, or to classify or refer for employment an individual on the basis of race, color, disability [~~handicap~~], religion, sex, national origin, or age.

SECTION 13. Section 5.03, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.03. LABOR ORGANIZATIONS. It is an unlawful employment practice for a labor organization:

(1) to exclude or to expel from membership or otherwise to discriminate against an individual because of race, color, disability [~~handicap~~], religion, sex, national origin, or age;

(2) to limit, segregate, or classify members or applicants for membership or to classify or to fail or refuse to refer for employment an individual because of race, color, disability [~~handicap~~], religion, sex, national origin, or age in a way:

(A) that would deprive or tend to deprive an individual of employment opportunities; or

(B) that would limit employment opportunities or otherwise adversely affect the status of an employee or of an applicant for employment; or

(3) that would cause or attempt to cause an employer to violate this article.

SECTION 14. Section 5.04, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.04. TRAINING PROGRAMS. (a) Unless the training or retraining opportunities or programs are provided under an affirmative action plan approved according to federal law, rule, or order, it is an unlawful employment practice for an employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job, or other training or retraining program to discriminate against an individual because of disability, age, race, color, religion, sex, or national origin in admission to or participation in a program established to provide apprenticeship, on-the-job, or other training or retraining opportunities.

(b) For the purposes of this section, "because of age" refers only to discrimination because of age against an individual who is at least 40 years of age but younger than 56 years of age.

SECTION 15. Section 5.05(b), Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) Unless disability [~~handicap~~], religion, sex, national origin, or age is a bona fide occupational qualification, it is an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling an apprenticeship, on-the-job, or other training or retraining program to print or publish or cause to be printed or published a notice or advertisement relating to employment indicating a preference, limitation, specification, or discrimination based on race, color, disability [~~handicap~~], religion, sex, national origin, or age, if the notice or advertisement concerns an employee's status, employment, or admission to or membership or participation in a labor union or an apprenticeship, on-the-job, or other training or retraining program.

SECTION 16. Section 5.07(a), Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Notwithstanding any other provision of this article, it is not an unlawful employment practice:

(1) for an employer to hire and to employ employees, for an employment agency to classify or refer for employment an individual, for a labor organization to classify its members or to classify or refer for employment an individual, or for an employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job, or other training or retraining program to admit or employ an individual in its program, on the basis of disability [~~handicap~~], religion, sex, national origin, or age, if disability [~~handicap~~], religion, sex, national origin, or age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise;

(2) for a religious corporation, association, society, or educational institution, or an educational organization operated, supervised, or controlled, in whole or in substantial part, by a religious corporation, association, or society, to limit employment or give preference to members of a particular [~~the same~~] religion;

(3) for an employer to apply different standards of compensation or different terms, conditions, or privileges of employment under a bona fide seniority system, bona fide merit system, or a bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade this Act, or under a system that measures earnings by quantity or quality of production if those different standards are not discriminatory on the basis of race, color, disability [~~handicap~~], religion, sex, national origin, or age, except that no employee benefit plan may excuse a failure to hire on the basis of age and no seniority or employee benefit plan may require or permit involuntary retirement on the basis of age;

(4) for an employer to apply to employees who work in different locations different standards of compensation or different terms, conditions, or privileges of employment if those different standards are not discriminatory on the basis of race, color, disability [~~handicap~~], religion, sex, national origin, or age;

(5) for an employer to impose minimum or maximum age requirements for peace officers or fire fighters;

(6) for a public school official to adopt or implement a plan reasonably designed to end discriminatory school practices; or

(7) for an employer to engage in any practice that has a discriminatory effect and that would otherwise be prohibited by this Act if the employer establishes that the practice is not intentionally devised or operated to contravene the prohibitions of this Act and is justified by business necessity.

SECTION 17. Section 5.09, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.09. IMBALANCE PLANS. This Act may not be interpreted to require a person subject to this Act to grant preferential treatment to an individual or to a group on the basis of the race, color, disability [handicap], religion, sex, national origin, or age of that individual or group because an imbalance exists between the total number or percentage of persons of that individual's or group's race, color, disability [handicap], religion, sex, national origin, or age employed by an employer, referred or classified for employment by an employment agency or labor organization, admitted to membership or classified by a labor organization, or admitted to or employed in any apprenticeship, on-the-job, or other training or retraining program, and the total number or percentage of persons of that race, color, disability [handicap], religion, sex, national origin, or age in any community, this state, region, or other area, or in the available work force in any community, this state, region, or other area.

SECTION 18. Section 6.01(d), Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) A showing of undue hardship by the respondent is a defense to a complaint of discrimination made by an employee or applicant based on disability [handicap]. With respect to a complaint based on disability [handicap], the commission's order must take into account the reasonableness of the cost of any necessary work place accommodation and the availability of alternatives or other appropriate relief.

SECTION 19. Section 7.01, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended by amending Subsections (a), (d), (e), and (f) and by adding Subsection (i) to read as follows:

(a) If the commission has made a determination that there is reasonable cause to believe that the respondent has engaged in an unlawful employment practice, and the commission's efforts to resolve the discriminatory practice to the satisfaction of the complainant and respondent through conciliation have been unsuccessful, the commission may bring a civil action against the respondent named in the charge if a majority of the commissioners determine that the civil action may effectuate the purposes of this Act. The complainant has the right to intervene in a civil action brought by the commission. If the complaint filed with the commission pursuant to Section 6.01 of this Act is dismissed by the commission, or is not resolved before the expiration of the 180th day ~~(if within 180 days)~~ after the date of filing of the complaint ~~[the commission has not filed a civil action under this section or has not successfully negotiated a conciliation agreement between the complainant and respondent]~~, the commission shall so inform [notify] the complainant in writing by certified mail. A complainant who is so informed is entitled to request from the commission a written notice of the complainant's right to file a civil action. The complainant must request the notice in writing. On receipt of a written request by a complainant, the commission shall issue the notice of the right to file a civil action before the expiration of the 180th day after the date the complaint was filed if the complainant alleges an unlawful employment practice based on the complainant's status as an individual with a life-threatening illness, as confirmed in writing by a physician licensed to practice medicine in this state, or if the executive director certifies that administrative processing of the complaint cannot be completed before the expiration of the 180th day after the date the complaint was filed. The commission shall issue the expedited notice by certified mail not later than the fifth business day after the date the commission receives the written request. The executive director may issue the notice on behalf of the commission. Within 60 days after the date of receipt of the notice, a civil action may be brought by the complainant against the respondent named in the charge. After timely application, the court may in its discretion permit the commission to intervene in any civil

action filed under this subsection on certification that the case is of general public importance and if the commission has, before commencement of the civil action by the complainant, issued a determination of reasonable cause to believe that the Act has been violated. In no event may any action be brought pursuant to this article more than one year after the date of filing of the complaint to which the action relates.

(d) Additional equitable relief may include but is not limited to:

(1) the hiring or reinstatement, with or without back pay, but back pay liability may not accrue for any date more than two years before the date of filing of a complaint with the commission, and interim earnings, workers' compensation benefits, and unemployment compensation benefits received shall operate to reduce the back pay otherwise allowable;

(2) the upgrading of employees with or without pay;

(3) the admission or restoration of union membership;

(4) the admission to or participation in a guidance program, apprenticeship, on-the-job, or other training or retraining program, with the use of objective job-related criteria in the admission of individuals to these programs;

(5) the reporting on the manner of compliance with the terms of a final order issued under this Act; and

(6) the payment of court costs.

(e) In any action or proceeding under this Act, the court in its discretion may allow the prevailing party, other than the commission, a reasonable attorney's fee as part of the costs. The state or an agency or a political subdivision of the state is liable for costs, including attorney's fees, to the same extent as a private person[; ~~except that the state, a state agency, or a political subdivision is not liable for attorney's fees~~].

(f) In the case of disabled [handicapped] employees or applicants, the court must take into account the undue hardship defense, including the reasonableness of the cost of any necessary work place accommodation and the availability of alternatives or other appropriate relief.

(i) A failure to issue notice or any other omission on the part of the commission does not affect a complainant's right under Subsection (a) of this section to bring a civil action against the respondent.

SECTION 20. Section 8.02(a), Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) An officer or employee of the commission may not make public any information obtained by the commission under its authority under Section 6.01 of this Act except as necessary to the conduct of a proceeding under this Act. The commission shall adopt rules that allow a party to a complaint filed under Section 6.01 reasonable access to the commission records relating to the complaint. Unless the complaint is resolved through a voluntary settlement or conciliation, the executive director shall, on the written request of a party, allow the party access to the commission records:

(1) following the final action of the commission; or

(2) if a civil action relating to the complaint has been filed in federal court alleging a violation of federal law.

SECTION 21. Section 10.04, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is repealed.

SECTION 22. (a) This Act takes effect September 1, 1989.

(b) The changes in law made by this Act in the qualifications of members of the Commission on Human Rights apply only to a member appointed on or after September 1, 1989.

(c) The first policy statement required to be filed under Section 3.04(e), Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), as added by this Act, must be filed before November 1, 1989.

SECTION 23. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1 - Wilson

Amend C.S.S.B. 479 by striking all below the enacting clause and substituting the following:

SECTION 1. Section 1.02, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.02. PURPOSES. The general purposes of this Act are:

(1) to provide for the execution of the policies embodied in Title VII of the federal Civil Rights Act of 1964, as amended (42 U.S.C. Section 2000e et seq.), and to create an authority that meets the criteria under 42 U.S.C. Section 2000e-5(c) and 29 U.S.C. Section 633; and

(2) to secure for persons within the state, including disabled persons, freedom from discrimination in certain transactions concerning employment, and thereby to protect the [their interest in] personal dignity of persons within the state; and to make available to the state the [their] full productive capacities of those persons, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of persons [individuals] within the state.

SECTION 2. Subsections (a) and (b), Section 1.04, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Except as provided by Section 5.04 of this Act, in [in] this Act, "because of age" or "on the basis of age" refers only to discrimination because of age or on the basis of age against an individual 40 years of age or older [and under 70 years of age]. Nothing in this Act prohibits the compulsory retirement of any employee who has attained 65 years of age [but not 70 years of age], and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policy-making position, if the employee is entitled to an immediate, nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of plans, of the employer of the employee, that equals, in the aggregate, at least \$27,000.

(b) In Article 5, "because of disability [handicap]" or "on the basis of disability [handicap]" refers to discrimination because of or on the basis of a physical or mental condition that does not impair an individual's ability to reasonably perform a job.

SECTION 3. Section 2.01, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.01. DEFINITIONS. In this Act, unless the context otherwise requires:

(1) "Bona fide occupational qualification" means a qualification:

(A) that is reasonably related to the satisfactory performance of the duties of a job; and

(B) for which there is a factual basis for believing that no [a] person of the excluded group would be able [unable] to perform satisfactorily the duties of the job with safety or efficiency.

(2) "Commission" means the Commission on Human Rights created by this Act.

(3) "Commissioner" means a member of the commission.

(4) "Disability" means a mental or physical impairment that substantially limits at least one major life activity or a record of such a mental or physical impairment. The term does not include a condition of addiction to any

drug or illegal or federally controlled substance or a condition of addiction to the use of alcohol.

(5) "Disabled" means having a disability.

(6) "Employee" means an individual employed by an employer, including an individual subject to the civil service laws of the state or a political subdivision of the state, except that the term "employee" does not include an individual elected by the qualified voters to public office in the state or a political subdivision of the state, an individual chosen by that officer to be on the officer's personal staff, an appointee on the policy-making level, or an immediate adviser with respect to the exercise of the constitutional or legal powers of public office.

(7) [(5)] "Employer" means:

(A) a person, including a school district or a special-purpose district or authority of this state, engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year and any agent of that person; or

(B) ~~[- The term includes]~~ a county or municipality or ~~[political subdivision and]~~ any state agency or instrumentality, including public institutions of higher education, regardless of the number of individuals employed.

(8) [(6)] "Employment agency" means a person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, including an agent of that person.

(9) [(7)(A)] "Handicapped person" means a person who has a mental or physical handicap, including mental retardation, hardness of hearing, deafness, speech impairment, visual handicap, being crippled, or any other health impairment that requires special ambulatory devices or services, as defined in Section 121.002(4), Human Resources Code, but does not include a person because he is addicted to any drug or illegal or federally controlled substances or because he is addicted to the use of alcohol.

[(B)] "Handicap" means a condition either mental or physical that includes mental retardation, hardness of hearing, deafness, speech impairment, visual handicap, being crippled, or any other health impairment that requires special ambulatory devices or services, as defined in Section 121.002(4), Human Resources Code, but does not include a condition of addiction to any drug or illegal or federally controlled substances or a condition of addiction to the use of alcohol.

[(8)] "Labor Organization" means a labor organization engaged in an industry affecting commerce, and includes:

(A) any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment;

(B) any conference, general committee, joint or system board, or joint council so engaged that is subordinate to a national or international labor organization; and

(C) an agent of a labor organization.

(10) [(9)] "Local commission" means a commission on human relations created by one or more political subdivisions.

(11) [(10)] "National origin" includes the national origin of an ancestor.

(12) [(11)] "Person" means one or more individuals or an association, corporation, joint-stock company, labor union, legal representative,

mutual company, partnership, receiver, trust, trustee, trustee in bankruptcy, unincorporated organization, the state, or a political subdivision or agency of the state.

(13) ~~(12)~~ "Political subdivision" means a county or municipality ~~[an incorporated city or town]~~.

(14) ~~(13)~~ "Religion" means all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable reasonably to accommodate the religious observance or practice of an employee or applicant without undue hardship on the conduct of the employer's business.

SECTION 4. Section 3.01, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and by adding Subsections (e) and (f) to read as follows:

(a) There is created the Commission on Human Rights to consist of six members. The governor shall appoint the commissioners with the advice and consent of the senate and designate one of the commissioners as chairman of the commission. One member of the commission shall be a representative of industry, one member shall be a representative of labor, and four members shall be representatives of the general public ~~[appointed at large]~~. In making appointments, the governor shall strive to achieve representation on the commission that is diverse with respect to disability, religion, age, economic status, sex, race, and ethnicity.

(e) A person is not eligible for appointment as a public member of the commission if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds from the commission;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the commission; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

(f) A person may not serve as a member of the commission or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

SECTION 5. The Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes) is amended by adding Section 3.011 to read as follows:

Sec. 3.011. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal from the commission if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) or (e) of Section 3.01 of this Act;

(2) does not maintain during service on the commission the qualifications required by Subsection (a) or (e) of Section 3.01 of this Act;

(3) violates a prohibition established by Subsection (f) of Section 3.01 of this Act;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent for more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the chairman of the commission of the

ground. The chairman shall then notify the governor that a potential ground for removal exists.

SECTION 6. Section 3.02, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.02. POWERS OF COMMISSION. (a) The commission has the following powers:

- (1) to maintain an office in the city of Austin;
- (2) to meet and exercise its powers at any place within the state[; ~~except in any political subdivision having a local commission as described in Section 4.02 of this Act~~];
- (3) to employ an executive director and authorize the employment of other staff members, including any necessary attorneys or clerks and other representatives or agents, and to fix the compensation of the executive director or other staff members, representatives, or agents;
- (4) to promote the creation of local commissions on human rights and to cooperate or contract with individuals or state, local, or other agencies, both public and private, including agencies of the federal government and of other states;
- (5) to accept public grants or private gifts, bequests, or other payments;
- (6) to receive, investigate, seek to conciliate, and pass on complaints alleging violations of this Act, and file civil actions to effectuate the purposes of this Act;
- (7) to request and, if necessary, compel by subpoena the attendance of necessary witnesses for examination under oath or affirmation, and the production, for inspection and copying, of records, documents, and other evidence relevant to the investigation of alleged violations of this Act. The commission by rule may authorize a commissioner or one of its staff to exercise the powers stated in this subdivision on behalf of the commission;
- (8) to furnish technical assistance requested by a person subject to this Act to further compliance with the Act or with rules or orders issued under this Act;
- (9) to render at least annually a comprehensive written report to the governor and to the legislature, which report may contain recommendations of the commission for legislative or other action to carry out the purposes and policies of this Act; and
- (10) to adopt, issue, amend, and rescind procedural rules to carry out the purposes and policies of this Act.

(b) The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

(c) The commission shall prepare and maintain a written plan that describes how a disabled person or a person who does not speak English can be provided reasonable access to the commission's programs.

(d) The commission shall develop on a biennial basis an inventory of equal employment opportunity policies and programs adopted and implemented by the various state agencies. The commission shall conduct studies of the policies and programs of selected state agencies if directed to do so by a resolution of the legislature or by an executive order of the governor.

SECTION 7. Section 3.03, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.03. SUNSET PROVISION. The Commission on Human Rights is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued

in existence as provided by that Act, the commission is abolished September 1, 2001 [1989].

SECTION 8. The Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes) is amended by adding Sections 3.04 and 3.05 to read as follows:

Sec. 3.04. PERSONNEL. (a) The executive director or the executive director's designee shall develop an intraagency career ladder program. The program shall require intraagency posting of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for commission employees must be based on the system established under this subsection.

(c) The commission shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(d) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies related to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the commission work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underutilization in the commission work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underutilization.

(e) A policy statement prepared under Subsection (d) must cover an annual period, be updated not less than annually, and be filed with the governor's office.

(f) The governor's office shall develop a biennial report to the legislature based on the information received under Subsection (e). The report may be made separately or as a part of other biennial reports made to the legislature.

(g) The commission shall develop and implement policies that clearly define the respective responsibilities of the commission and the staff of the commission.

Sec. 3.05. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The commission shall prepare information of public interest describing the functions of the commission and the commission's procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the public and appropriate state agencies.

(b) If a written complaint is filed with the commission that the commission has authority to resolve, the commission, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission.

SECTION 9. Section 4.02, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.02. LOCAL COMMISSIONS. A political subdivision or two or more political subdivisions acting jointly may create a local commission to promote the purposes of this Act and to secure for all individuals within the jurisdiction of the political subdivision or subdivisions freedom from discrimination because of race,

color, disability [handicap], religion, sex, national origin, or age and may appropriate funds for the expenses of the local commission.

SECTION 10. Subsection (a) Section 4.04, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The state commission shall refer a complaint filed with it to a local commission with the necessary investigatory and conciliatory powers if the complaint concerns discrimination in employment because of race, color, disability [handicap], religion, sex, national origin, or age, and:

(1) the complaint has been referred to the state commission by the federal government; or

(2) the jurisdiction over the subject matter of the complaint has been deferred to the state commission by the federal government.

SECTION 11. Section 5.01, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.01. EMPLOYERS. It is an unlawful employment practice for an employer:

(1) to fail or refuse to hire or to discharge an individual or otherwise to discriminate against an individual with respect to compensation or the terms, conditions, or privileges of employment because of race, color, disability [handicap], religion, sex, national origin, or age; or

(2) to limit, segregate, or classify an employee or applicant for employment in a way that would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the status of an employee because of race, color, disability [handicap], religion, sex, national origin, or age.

SECTION 12. Section 5.02, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.02. EMPLOYMENT AGENCIES. It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against an individual because of race, color, disability [handicap], religion, sex, national origin, or age, or to classify or refer for employment an individual on the basis of race, color, disability [handicap], religion, sex, national origin, or age.

SECTION 13. Section 5.03, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.03. LABOR ORGANIZATIONS. It is an unlawful employment practice for a labor organization:

(1) to exclude or to expel from membership or otherwise to discriminate against an individual because of race, color, disability [handicap], religion, sex, national origin, or age;

(2) to limit, segregate, or classify members or applicants for membership or to classify or to fail or refuse to refer for employment an individual because of race, color, disability [handicap], religion, sex, national origin, or age in a way:

(A) that would deprive or tend to deprive an individual of employment opportunities; or

(B) that would limit employment opportunities or otherwise adversely affect the status of an employee or of an applicant for employment; or

(3) that would cause or attempt to cause an employer to violate this article.

SECTION 14. Section 5.04, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.04. TRAINING PROGRAMS. (a) Unless the training or retraining opportunities or programs are provided under an affirmative action plan approved

according to federal law, rule, or order, it is an unlawful employment practice for an employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job, or other training or retraining program to discriminate against an individual because of disability, age, race, color, religion, sex, or national origin in admission to or participation in a program established to provide apprenticeship, on-the-job, or other training or retraining opportunities.

(b) For the purposes of this section, "because of age" refers only to discrimination because of age against an individual who is at least 40 years of age but younger than 56 years of age.

SECTION 15. Subsection (b), Section 5.05 (1), Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) Unless disability [handicap], religion, sex, national origin, or age is a bona fide occupational qualification, it is an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling an apprenticeship, on-the-job, or other training or retraining program to print or publish or cause to be printed or published a notice or advertisement relating to employment indicating a preference, limitation, specification, or discrimination based on race, color, disability [handicap], religion, sex, national origin, or age, if the notice or advertisement concerns an employee's status, employment, or admission to or membership or participation in a labor union or an apprenticeship, on-the-job, or other training or retraining program.

SECTION 16. Subsection (a), Section 5.07, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Notwithstanding any other provision of this article, it is not an unlawful employment practice:

(1) for an employer to hire and to employ employees, for an employment agency to classify or refer for employment an individual, for a labor organization to classify its members or to classify or refer for employment an individual, or for an employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job, or other training or retraining program to admit or employ an individual in its program, on the basis of disability [handicap], religion, sex, national origin, or age, if disability [handicap], religion, sex, national origin, or age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise;

(2) for a religious educational institution or an educational organization operated, supervised, or controlled, in whole or in substantial part, by a religious corporation, association, or society to limit employment or give preference to members of the same religion;

(3) for an employer to apply different standards of compensation or different terms, conditions, or privileges of employment under a bona fide seniority system, bona fide merit system, or a bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade this Act, or under a system that measures earnings by quantity or quality of production if those different standards are not discriminatory on the basis of race, color, disability [handicap], religion, sex, national origin, or age, except that no employee benefit plan may excuse a failure to hire on the basis of age and no seniority or employee benefit plan may require or permit involuntary retirement on the basis of age;

(4) for an employer to apply to employees who work in different locations different standards of compensation or different terms, conditions, or privileges of employment if those different standards are not discriminatory on the basis of race, color, disability [handicap], religion, sex, national origin, or age;

(5) for an employer to impose minimum or maximum age requirements for peace officers or fire fighters;

(6) for a public school official to adopt or implement a plan reasonably designed to end discriminatory school practices; or

(7) for an employer to engage in any practice that has a discriminatory effect and that would otherwise be prohibited by this Act if the employer establishes that the practice is not intentionally devised or operated to contravene the prohibitions of this Act and is justified by business necessity.

SECTION 17. Section 5.09, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.09. IMBALANCE PLANS. This Act may not be interpreted to require a person subject to this Act to grant preferential treatment to an individual or to a group on the basis of the race, color, disability [handicap], religion, sex, national origin, or age of that individual or group because an imbalance exists between the total number or percentage of persons of that individual's or group's race, color, disability [handicap], religion, sex, national origin, or age employed by an employer, referred to or classified for employment by an employment agency or labor organization, admitted to membership or classified by a labor organization, or admitted to or employed in any apprenticeship, on-the-job, or other training or retraining program, and the total number or percentage of persons of that race, color, disability [handicap], religion, sex, national origin, or age in any community, this state, region, or other area, or in the available work force in any community, this state, region, or other area.

SECTION 18. Subsection (d), Section 6.01, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) A showing of undue hardship by the respondent is a defense to a complaint of discrimination made by an employee or applicant based on disability [handicap]. With respect to a complaint based on disability [handicap], the commission's order must take into account the reasonableness of the cost of any necessary work place accommodation and the availability of alternatives or other appropriate relief.

SECTION 19. Section 7.01, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended by amending Subsections (a), (d), (e), and (f) and by adding Subsection (i) to read as follows:

(a) If the commission has made a determination that there is reasonable cause to believe that the respondent has engaged in an unlawful employment practice, and the commission's efforts to resolve the discriminatory practice to the satisfaction of the complainant and respondent through conciliation have been unsuccessful, the commission may bring a civil action against the respondent named in the charge if a majority of the commissioners determine that the civil action may effectuate the purposes of this Act. The complainant has the right to intervene in a civil action brought by the commission. If the complaint filed with the commission pursuant to Section 6.01 of this Act is dismissed by the commission, or is not resolved before the expiration of the 180th day [if within 180 days] after the date of filing of the complaint [the commission has not filed a civil action under this section or has not successfully negotiated a conciliation agreement between the complainant and respondent], the commission shall so inform [notify] the complainant in writing by certified mail. A complainant who is so informed is entitled to request from the commission a written notice of the complainant's right to file a civil action. The complainant must request the notice in writing. On receipt of a written request by a complainant, the commission shall issue the notice of the right to file a civil action before the expiration of the 180th day after the date the complaint was filed if the complainant alleges an unlawful employment practice based on the complainant's status as an individual with a life-threatening illness or if the executive director certifies that administrative processing of the complaint cannot be completed before the expiration of the 180th day after the date the complaint was filed. The commission shall issue the expedited notice by certified mail not later than the fifth

business day after the date the commission receives the written request. The executive director may issue the notice on behalf of the commission. Within 60 days after the date of receipt of the notice, a civil action may be brought by the complainant against the respondent named in the charge. After timely application, the court may in its discretion permit the commission to intervene in any civil action filed under this subsection on certification that the case is of general public importance and if the commission has, before commencement of the civil action by the complainant, issued a determination of reasonable cause to believe that the Act has been violated. In no event may any action be brought pursuant to this article more than one year after the date of filing of the complaint to which the action relates.

(d) Additional equitable relief may include but is not limited to:

(1) the hiring or reinstatement, with or without back pay, but back pay liability may not accrue for any date more than two years before the date of filing of a complaint with the commission, and interim earnings, workers' compensation benefits, and unemployment compensation benefits received shall operate to reduce the back pay otherwise allowable;

(2) the upgrading of employees with or without pay;

(3) the admission or restoration of union membership;

(4) the admission to or participation in a guidance program, apprenticeship, on-the-job, or other training or retraining program, with the use of objective job-related criteria in the admission of individuals to these programs;

(5) the reporting on the manner of compliance with the terms of a final order issued under this Act; and

(6) the payment of court costs.

(e) In any action or proceeding under this Act, the court in its discretion may allow the prevailing party, other than the commission, a reasonable attorney's fee as part of the costs. The state or an agency or a political subdivision of the state is liable for costs, including attorney's fees, to the same extent as a private person[; except that the state, a state agency, or a political subdivision is not liable for attorney's fees].

(f) In the case of disabled ~~handicapped~~ employees or applicants, the court must take into account the undue hardship defense, including the reasonableness of the cost of any necessary work place accommodation and the availability of alternatives or other appropriate relief.

(i) A failure to issue the notice of the complainant's right to file a civil action does not affect a complainant's right under Subsection (a) of this section to bring a civil action against the respondent.

SECTION 20. Subsection (a), Section 8.02, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) An officer or employee of the commission may not make public any information obtained by the commission under its authority under Section 6.01 of this Act except as necessary to the conduct of a proceeding under this Act. The commission shall adopt rules that allow a party to a complaint filed under Section 6.01 reasonable access to the commission records relating to the complaint. Unless the complaint is resolved through a voluntary settlement or conciliation, the executive director shall, on the written request of a party, allow the party access to the commission records:

(1) following the final action of the commission; or

(2) if a civil action relating to the complaint has been filed in federal court alleging a violation of federal law.

SECTION 21. Section 10.04, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), is repealed.

SECTION 22. (a) This Act takes effect September 1, 1989.

(b) The changes in law made by this Act in the qualifications of members of the Commission on Human Rights apply only to a member appointed on or after September 1, 1989.

(c) The first policy statement required to be filed under Subsection (e), Section 3.04, Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), as added by this Act, must be filed before November 1, 1989.

SECTION 23. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 2 - Eckels

Amend Floor Amendment No. _____ for S.B. 479 as follows:

On page 21, line 5, after the word "illness" add "as confirmed in writing by a physician licensed to practice medicine in this state."

Floor Amendment No. 3 - Eckels

Amend Floor Amendment No. 1 for S.B. 479 to read as follows: On page 3, line 9, delete subsection (4) and substitute the following new section (4):

(4) "Disability" means a mental or physical impairment that substantially limits at least one major life activity, and a record of such a mental or physical impairment. The term does not include:

(A) a condition of addiction to any drug or illegal or federally controlled substance or a condition of addiction to the use of alcohol; or

(B) a communicable disease or infection that constitutes a direct threat to the health or safety of other persons or that makes the affected person unable to perform the duties of the person's employment.

Floor Amendment No. 4 - Fraser

Amend Amendment No. _____ to Wilson amendment C.S.S.B. 479 as follows:

(1) strike Subsection (B) and insert

"(B) a communicable disease or infection, including but not limited to acquired immune deficiency syndrome or infection with the human immunodeficiency virus, that constitutes a direct or indirect threat to the health or safety of other persons or that makes the affected person unable to perform the duties of the person's employment".

Floor Amendment No. 5 - Eckels

Amend Floor Amendment No. _____ for S.B. 479 as follows:

On page 17, line 18, after the word "religious" add "corporation, association, society, or"

Floor Amendment No. 6 - Eckels

Amend S.B. 479 on page 12, line 26 by placing after the word "investigation" the following:

by another agency of the state, federal or local government.

Floor Amendment No. 1 on Third Reading - Wilson

Amend S.B. 479 on page 3 by deleting lines 26-27 and on page 4 by deleting lines 1-8 and substituting the following:

“(7) [(5)] ”Employer“ means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year and any agent of that person. The term includes a political subdivision and any state agency or instrumentality, including public institutions of higher education.”

Floor Amendment No. 2 on Third Reading - Wilson

Amend **S.B. 479** on third reading as follows:

Change Section 2.01, subsection 4, by striking the word “and” that appears after the word “activity” in the first full sentence and substituting the word “or”.

The amendments were read.

Senator Barrientos moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 479** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Barrientos, Chairman; Edwards, Lyon, Parmer and Washington.

SENATE BILL 452 WITH HOUSE AMENDMENTS

Senator Krier called **S.B. 452** from the President’s table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Floor Amendment No. 1 - Grusendorf

Amend **S.B. 452** as follows:

(1) On page _____, between lines _____ and _____, add new Section appropriately numbered to read as follows and renumber subsequent sections accordingly:

SECTION _____. Section 53.059, Property Code, is amended by adding Subsection () to read as follows:

() A person who files a lien affidavit under Subchapter C that relates to a homestead and who knowingly states in the affidavit a false or invalid claim commits a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code).

Floor Amendment No. 2 - T. Smith, Parker

Amend **S.B. 452** as follows:

(1) On page 6, between lines 5 and 6, add a new Section 9 to read as follows:

SECTION 9. Chapter 51, Property Code, is amended by adding Section 51.003 to read as follows:

Sec. 51.003. RESORT TO MORTGAGE COLLATERAL AND ELECTION OF JUDICIAL OR NON-JUDICIAL FORECLOSURE REMEDIES.

(a) Notwithstanding any other provision of law to the contrary, before bringing any suit or other action against a debtor, or any other party primarily or contingently liable on a debt secured by a mortgage covering real property, the mortgagee and any other beneficiary of the mortgage must first resort to, and fully exhaust all of their remedies against, all tangible collateral securing the debt. The requirements imposed on mortgagees and other beneficiaries of a mortgage under this section may not be waived or otherwise circumvented by mortgagors, mortgagees, or any other party to a mortgage.

(b) In order to exhaust their remedies against the collateral, as required by Subsection (a), a mortgagee and any other beneficiary of a mortgage containing a power of sale must elect either to:

(1) conduct a nonjudicial foreclosure sale in strict accordance with both the terms of the power of sale contained in the mortgage instruments and Section 51.002; or

(2) pursue a judicial foreclosure, in which event an expedited judicial foreclosure proceeding will be conducted to determine the fair market value of the collateral as of the date of sale.

(c) The sales price at a judicial foreclosure sale must be equal to or greater than the fair market value determined in the judicial foreclosure proceeding or the amount of the indebtedness secured by the mortgage, whichever is less. The court may consider any evidence of probative value in determining the fair market value.

(d) An election under Subsection (b) may be made at any time. However, written notice of the election must be given to all parties liable for the debt not less than five days before the sale, and at no time may judicial and nonjudicial remedies, and the measures required to effectuate those remedies, be exercised concurrently.

(e) A sale under Section 51.002 discharges the debt and obligations secured by the mortgage in their entirety, and thereafter, no action lies against the debtor, or any other party primarily or contingently liable for the debt and obligations secured by the mortgage, notwithstanding anything contained in any mortgage instrument to the contrary.

(f) Only after conducting a judicial foreclosure sale as set out in Subsection (b)(2) and properly crediting all proceeds from the sale against the indebtedness secured by the mortgage may the beneficiary of the mortgage be entitled to pursue a deficiency suit against the debtor or any other party primarily or contingently liable on the debt secured by the mortgage.

(g) If the proceeds from the judicial foreclosure sale conducted under Subsection (b)(2) are not sufficient to satisfy all outstanding debt secured by the mortgage and the costs and expenses chargeable against the debtor, then the debtor and any other party who is primarily or contingently liable on the debt has a 90-day right of redemption, which can only be exercised by giving written notice to the beneficiary of the mortgage within 30 days of the date of the foreclosure sale.

(h) This section applies to procedures used in conducting all judicial and nonjudicial sales of real property.

(2) Renumber remaining sections appropriately.

Floor Amendment No. 1 on Third Reading - P. Hill

Article 21.48A, Insurance Code, is amended by adding Section 3b to read as follows:

Sec. 3b. Any monies received by a lender from private mortgage insurance shall be credited to the account of the borrower prior to bringing an action at law for any deficiency owed by the borrower.

Floor Amendment No. 2 on Third Reading - A. Smith

Amend **S.B. 452** on third reading by inserting the following as the last sentence of Section 51.003(d), Property Code, as added:

If a judicial remedy is sought, a hearing to determine the fair market value must be held within 30 days after receipt of the written notice under this subsection.

Floor Amendment No. 3 on Third Reading - A. Smith

Amend **S.B. 452** on third reading by adding to Section 51.003(e), Property Code, as added, "unless this foreclosure is subsequent and pursuant to the judicial foreclosure".

The amendments were read.

Senator Krier moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **S.B. 452** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Krier, Chairman; Glasgow, Bivins, Parker and Washington.

**NOTICE OF SESSION TO HOLD
LOCAL AND UNCONTESTED BILLS CALENDAR**

Senator Sims announced that a Local and Uncontested Bills Calendar had been placed on the Members' desks and gave notice that a Local and Uncontested Bills Calendar would be held at 8:00 a.m. tomorrow and that all bills would be considered on second reading in the order in which they are listed.

SENATE RULE 7.22(b) SUSPENDED

On motion of Senator Uribe and by unanimous consent, Senate Rule 7.22(b) was suspended as it relates to House amendments to **S.B. 843**.

SENATE BILL 843 WITH HOUSE AMENDMENTS

Senator Uribe called **S.B. 843** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment - Uher

Amend **S.B. 843** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 38.01, Penal Code, is amended to read as follows:
Sec. 38.01. DEFINITIONS. In this Chapter:

(1) "Complaining witness" means the victim of a crime or a person who signs a criminal complaint.

(2) "Custody" means detained or under arrest by a peace officer or under restraint by a public servant pursuant to an order of a court.

(3) "Escape" means unauthorized departure from custody or failure to return to custody following temporary leave for a specific purpose or limited period, but does not include a violation of conditions of probation or parole.

(4) "Economic benefit" means anything reasonably regarded as an economic gain or advantage.

(5) "Funeral establishment" means an establishment licensed under Section 4, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes).

(6) [4] "Governmental function" includes any activity that a public servant is lawfully authorized to undertake on behalf of government.

(7) "Hospital" means a general hospital or special hospital as defined by the Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes).

(8) "Member of the family" means anyone related within the third degree of consanguinity or affinity.

(9) [5] "Official proceeding" means:

(A) a proceeding before a magistrate, court, or grand jury of this state;

(B) a proceeding before the legislature or an inquiry authorized by either house or any joint committee established by a joint or concurrent resolution of the two houses of the legislature or any committee or subcommittee of either house of the legislature;

(C) a proceeding in which pursuant to lawful authority a court orders attendance or the production of evidence; or

(D) a proceeding that otherwise is made expressly subject to this chapter.

(10) "Qualified non-profit organization" means a non-profit organization which meets the following conditions:

(A) the primary purposes of the organization do not include the rendition of legal services, or education regarding legal services;

(B) the recommending, furnishing, paying for, or educating persons regarding legal services is incidental and reasonably related to the primary purposes of such organization;

(C) such organization does not derive a financial benefit from the rendition of legal services by a lawyer; and

(D) the person for whom the legal services are rendered, and not the organization, is recognized as the client of a lawyer.

(11) "Solicitation" means a communication about a suit or claim in person or by telephone with the claimant or the claimant's family members or the defendant or the defendant's family members when neither the claimant nor defendant nor someone acting on the claimant's or defendant's behalf has sought advice regarding that suit or claim and the actor is not a member of the family of the prospective client or attorney and is not an attorney who has a prior attorney-client relationship with the prospective client. Solicitation does not include speaking to a qualified non-profit organization for the purpose of educating laymen to recognize legal problems, to make intelligent selection of legal counsel, or to utilize available legal services.

SECTION 2. Section 38.12, Penal Code, is amended to read as follows:

Sec. 38.12. BARRATRY. (a) A person commits an offense if, with intent to obtain an economic [a] benefit for himself, [or to harm another] he:

(1) institutes any suit or claim in which he knows he has no interest;

(2) institutes any suit or claim that he knows is false;

(3) solicits employment for himself or another to prosecute or defend a suit or to collect a claim; or

(4) procures another to solicit for him or another employment to prosecute or defend a suit or to collect a claim.

(b) Intent to obtain an economic benefit is presumed if the person accepts employment for a fee, accepts a fee, or accepts or agrees to accept money or any economic benefit.

(c) [b] Except as provided by subsection (d) of this Section, a[A]n offense under subsection (a) of this section is a Class A misdemeanor.

(d) Two or more convictions under subsection (a)(3) or (4) of this Section constitute a felony of the third degree if the solicitations are performed in whole or in part:

(1) in a hospital, funeral establishment, or public or private cemetery or at the scene of an accident;

(2) by using a person who is an employee of:

(A) this state;

(B) a political subdivision of this state, including a county, municipality, or special purpose district or authority; or

(C) a hospital or funeral establishment;

(3) by impersonating a clergyman, public employee, or emergency assistance worker or volunteer.

(e) Final conviction of felony barratry shall constitute a serious crime for all purposes and acts, specifically including the State Bar Rules.

SECTION 3. Subchapter C, Chapter 82, Government Code, is amended by adding Section 82.065 to read as follows:

Sec. 82.065. CONTINGENT FEE CONTRACT FOR LEGAL SERVICES.

(a) A contingent fee contract for legal services must be in writing and signed by the attorney and client.

(b) A contingent fee contract for legal services is voidable by the client if it is procured as a result of conduct violating the laws of this state or the Disciplinary Rules of the State Bar of Texas regarding barratry by attorneys or other persons.

SECTION 4. (a) Section 2 of this Act relating to the offense of barratry applies only to offenses committed on or after the effective date of the Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and that law is continued in effect for that purpose. For purposes of this subsection, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) Section 3 of this Act relating to contingent fee contracts for legal services applies only to contracts executed on or after the effective date of this Act.

SECTION 5. This Act takes effect September 1, 1989.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1 - Wolens

Amend S.B. 843 on page 3, by striking the language beginning with line 4 and ending with line 15, and substituting the following in lieu thereof.

“(11) “Solicits” and “to solicit” mean a communication in person or by telephone with a claimant or defendant or member of such person’s family when neither the person receiving the communication nor anyone acting on that person’s behalf has requested the communication. “Solicits” or “to solicit” does not include a communication by a family member of the person receiving the communication, a communication by an attorney who has a prior attorney-client relationship with the person receiving the communication or a communication with a qualified non-profit organization for the purpose of educating laymen to recognize legal problems, to make intelligent selection of legal counsel, or to utilize available legal services.

Floor Amendment No. 2 - Wolens

Amend S.B. 843 as follows:

(1) On page 5, between lines 4 and 5, insert a new Section 4 to read as follows and renumber current Sections 4-6 as 5-7:

SECTION 4. Subchapter C, Chapter 82, Government Code, is amended by adding Section 82.066 to read as follows:

Sec. 82.066. ATTORNEY MAY NOT APPEAR. An attorney may not appear before a judge or justice in a civil case if the attorney is related to the judge or justice by affinity or consanguinity within the first degree.

(2) On page 5, between lines 15 and 16, insert the following:

(c) Section 4 of this Act applies only to appearances in court for causes of action for which the original petition was filed on or after the effective date of this Act.

Floor Amendment on Third Reading - Parker

Amend S.B. 843 as follows:

1) At page 5, line 6, insert a subsection (c) to read as follows:

(c) No attorney licensed to practice law in this state may deposit client funds in an interest bearing account for the benefit of another without express written consent of the beneficiary of such funds.

2) Insert the following by adding an appropriately numbered section to read as follows:

SECTION ____ SEVERABILITY. (a) If any portion of this Act is found to be unconstitutional, the other portions shall not be affected.

The amendments were read.

Senator Uribe moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 843 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Uribe, Chairman; Barrientos, Farmer, Whitmire and Carriker.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Brooks and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Health and Human Services might consider H.B. 3168 upon adjournment today.

RECESS

On motion of Senator Brooks, the Senate at 12:32 p.m. took recess until 2:00 p.m. today.

AFTER RECESS

The Senate met at 2:00 p.m. and was called to order by the President.

MESSAGE FROM THE HOUSE

House Chamber
May 19, 1989

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.C.R. 48, Encouraging every school district in the State of Texas to have a school psychologist, an associate school psychologist or a consulting psychologist. (As amended)

S.C.R. 25, Directing the Legislative Budget Board staff to monitor use of federal Job Training Partnership Act funds.

S.B. 1019, Relating to funding of elementary and secondary education. (As substituted and amended)

S.B. 1800, Relating to the terms of commissioners of the Orange County Navigation and Port District.

S.B. 1031, Relating to the authorization for a student recreational sports fee for institutions within the Texas State University System.

S.B. 783, Relating to hearings under the fire fighters' and police officers' civil service in certain cities. (As amended)

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

REPORT OF STANDING COMMITTEE

By unanimous consent, Senator Sims submitted the following report for the Committee on Administration:

S.R. 655
S.R. 615
S.C.R. 162
S.C.R. 161
S.C.R. 115
C.S.H.C.R. 107
C.S.S.C.R. 64
C.S.S.C.R. 65
C.S.S.C.R. 81
C.S.S.C.R. 112
C.S.S.C.R. 138
C.S.S.C.R. 146
C.S.S.C.R. 157
C.S.S.C.R. 158
C.S.S.C.R. 159
C.S.S.R. 418
C.S.S.R. 653

SENATE BILL 1528 WITH HOUSE AMENDMENT

Senator Glasgow called S.B. 1528 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Local and Consent Calendars Committee Amendment - Harris

Amend S.B. 1528 as follows:

On page 2, strike Section 2 and Section 3 and substitute the following:

SECTION 2. Whenever the governing body of a home-rule municipality shall, by resolution, ordinance or other proceeding regulate and control the use and development of any watersheds, flood prone areas and impoundment areas for flood control and preservation, there shall be filed with the County Clerk of the county or counties in which the property subject to such regulation is situated, a notice signed in the name of the city by its clerk, secretary or mayor or other officer performing the duties of such. Such notice shall meet all requirements of this section when it shows substantially that the governing body of such city, has, by resolution, ordinance or other proceeding, enacted regulations of such area and shall give or attach the boundaries of the land or lands subject to such regulation. It shall not be necessary that any notice required by this section give details or be sworn to or acknowledged, and same may be filed at any time and the county clerk with whom any such notice is filed shall record the same in the records of deeds and shall index same in the name of the city.

SECTION 3. This Act takes effect September 1, 1989.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Renumber all subsequent sections.

The amendment was read.

On motion of Senator Glasgow and by unanimous consent, the Senate concurred in the House amendment to S.B. 1528 viva voce vote.

SENATE BILL 508 WITH HOUSE AMENDMENT

Senator McFarland called S.B. 508 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Guerrero

Amend S.B. 508 on page 14, line 24, by adding the words "and by rule adopt" between the word "develop" and the word "a".

The amendment was read.

On motion of Senator McFarland and by unanimous consent, the Senate concurred in the House amendment to S.B. 508 viva voce vote.

SENATE BILL 1573 WITH HOUSE AMENDMENTS

Senator Caperton called S.B. 1573 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - Hury

Amend S.B. 1573 as follows:

(1) On page 4, strike lines 7 and 8 and substitute the following:

SECTION 7. Section 112.058, Tax Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (e) to read as follows:

(2) On page 6, between lines 17 and 18, insert the following:

(e) All protest payments of the taxes imposed under Chapters 151, 152, 154, 155, 156, 157, and 171 that become due during the fiscal biennium beginning September 1, 1989, may not be placed in a suspense account, but immediately shall be deposited to the credit of the fund or funds to which those taxes are allocated by law.

Committee Amendment No. 2 - Schlueter

Amend S.B. 1573 as follows:

Amend Section 27 of the bill by adding a new subsection (d) to read as follows:

(d) Section 21 of this act applies only to taxes accruing and becoming due after September 1, 1989.

Amend page 9, line 12 to add "assessment or" between the words "the" and "collection"

Amend page 9, line 22 to add "assessment or" between the words "the" and "collection"

Amend page 12, line 12 to add "assessment or" between the words "the" and "collection"

Amend page 25, line 20 to add "assessment or" between the words "the" and "collection"

Amend page 26, line 4 to add "assessment or" between the words "the" and "collection"

Amend page 10, line 2 to add "temporary or" between the words "a" and "permanent"

Amend page 12, line 12 to add "temporary or" between the words "a" and "permanent"

Amend page 26, line 8 to add "temporary or" between the words "a" and "permanent"

Amend page 29, line 24 to add "temporary or" between the words "a" and "permanent"

Amend page 19 line 12 to add "or a tax or other amount imposed under the TEXAS UNEMPLOYMENT COMPENSATION ACT (Article 5221(b)-1 et seq. Vernon's Texas Civil Statutes)," between the words "applies," and "contends"

The amendments were read.

On motion of Senator Caperton and by unanimous consent, the Senate concurred in the House amendments to S.B. 1573 viva voce vote.

SENATE BILL 690 WITH HOUSE AMENDMENT

Senator Green called **S.B. 690** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Pumbo

Amend **S.B. 690** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 143.129(d), Local Government Code, is amended to read as follows:

(d) If the proposed solution is not acceptable, the fire fighter or police officer may either submit a written request stating the person's decision to appeal to an independent third party hearing examiner pursuant to the provisions of section 143.057 or file a step III grievance form with the director in accordance with Section 143.130. If the fire fighter or police officer fails to timely file a step III grievance form or a written request to appeal to a hearing examiner, the solution is considered accepted. Notwithstanding Section 143.057(i), if the fire fighter or police officer prevails and the hearing examiner upholds the grievance in its entirety, the department shall bear the cost of the appeal to the hearing examiner. If the fire fighter or police officer fails to prevail and the hearing examiner denies the grievance in its entirety, the fire fighter or police officer shall bear the cost of the appeal to the hearing examiner. If neither party entirely prevails and the hearing examiner upholds part of the grievance and denies part of it, the hearing examiner's fees and expenses shall be shared equally by the fire fighter or police officer and by the department.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Green moved to concur in the House amendment to **S.B. 690**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 187 ADOPTED**

Senator Zaffirini called from the President's table the Conference Committee Report on **H.B. 187**. (The Conference Committee Report having been filed with the Senate and read on Wednesday, May 17, 1989.)

On motion of Senator Zaffirini, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

COMMITTEE OF THE WHOLE SENATE

On motion of Senator Brooks and by unanimous consent, the Senate at 2:11 p.m. resolved into a Committee of the Whole Senate with Senator Brooks presiding.

IN LEGISLATIVE SESSION

The President called the Senate to order at 7:27 p.m. as In Legislative Session.

HOUSE BILLS ON FIRST READING

The following bills received from the House were read the first time and referred to the Committee indicated:

H.B. 1954, To Committee on Finance.

H.B. 2945, To Committee on Finance.

**COMMITTEE SUBSTITUTE
SENATE BILL 1550 ON SECOND READING**

The Senate resumed consideration of the following bill on its second reading and passage to engrossment:

C.S.S.B. 1550, Relating to the applicability of the Texas Workers' Compensation Act to certain employers and employees.

(Further consideration of the bill having today been postponed until the conclusion of today's meeting of the Committee of the Whole Senate)

Question - Shall the bill be passed to engrossment?

On motion of Senator Parmer, further consideration of **C.S.S.B. 1550** was postponed until 11:00 a.m. Tuesday, May 23, 1989, by the following vote: Yeas 14, Nays 12.

Yeas: Barrientos, Brooks, Caperton, Dickson, Edwards, Harris, Johnson, Lyon, Montford, Parker, Parmer, Truan, Uribe, Zaffirini.

Nays: Armbrister, Bivins, Brown, Glasgow, Haley, Henderson, Krier, Leedom, McFarland, Ratliff, Sims, Tejeda.

Absent: Carriker, Green, Santiesteban, Washington, Whitmire.

CONGRATULATORY RESOLUTIONS

H.C.R. 283 - (Truan): Designating the Texas Jazz Festival in Corpus Christi as the Official Jazz Festival of Texas.

S.C.R. 163 - By Brooks: Extending congratulations to The University of Texas Board of Regents for rehabilitating the Ashbel Smith Building and restoring it to its original functions of anatomy laboratory, amphitheater and office building.

S.C.R. 164 - By Haley: Repealing the adoption of House Concurrent Resolution 183, 71st Legislature, Regular Session, 1989, and redesignating the third Friday in January of each year as "Arbor Day."

S.R. 689 - By Montford: Extending congratulations to D. L. "Dally" Willis on his 69th birthday.

S.R. 690 - By Truan: Extending congratulations to Ray High School Academic Decathlon Team of Corpus Christi for their brilliant showing in the State Academic Decathlon.

S.R. 691 - By Truan: Extending congratulations to Joe L. Charba of Robstown on his 80th birthday.

S.R. 692 - By Parker: Commending Dr. O. C. "Mike" Taylor on his outstanding career in education and extending to him best wishes for a happy and rewarding retirement.

RECESS

On motion of Senator Brooks, the Senate at 7:37 p.m. recessed until 8:00 a.m. tomorrow.